

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

DATES AND EVENTS

IN

CIVIL MISC. WRIT PETITION NO. _____ OF 2020

(Under Article 226 of the Constitution of India)

District- Moradabad

Laxmi Devi Shukla & ORS.

..... **Petitioners****Versus**

State of U.P. and ORS.

..... **Respondents**

S. No.	Dates	Events
1.	01/09/2020	On the night of 01/09/2020, at about 10:00 PM, Apar Shukla, since deceased, the son/brother of the petitioners, as shown in the caption clause, was returning home on his two-wheeler, after dropping his friend off at his house. Upon reaching the main road, in front of CL Gupta World School, he encountered a deep pot-hole in the middle-left of the road, which was obscured and almost invisible on account of the power-cut at that time.
2.	--	Apar could not observe the said pot-hole and could make it out only upon reaching the damned spot, almost about to fall into the same. However, to save himself from

		<p>falling into the pot-hole, the deceased tried to manoeuvre his two-wheeler away from the pot-hole by taking a sharp turn. Unfortunately, in his effort in the said behalf, he collided head-on with the horns of a stray bull, standing alongside, which too was not visible owing to the stark darkness. Accordingly, the deceased suffered grievous ante-mortem injuries. He was rushed to the hospital and was declared brought dead.</p>
3.		<p>The factors precisely contributing to the tragic end of the life of the son/brother of the petitioners, as shown in the caption clause, are three-fold: (a) Deadly, negligently uncovered pot-hole(s); (b) Dangerous stray animal(s), freely roaming, in residential area, and (c) Power-cut of street-lighting on the main-road, resulting in complete darkness; all of which are bounden statutory and constitutional duties of the Municipal Corporation (Nagar Nigam) to take care of and maintain.</p> <p>However, in the instant case, it is a clear case of gross negligence on the part of the Municipal authorities (Respondents 2, 3 & 4), who palpably failed to fulfil their binding obligation(s), resulting in the shattering and gruesome demise of the young and promising Apar Shukla, who died in the most horrifying and macabre of ways.</p>
4.	14/10/2020	<p>In view of the above, a legal notice dt. 14/10/2020 was tendered (via email) on behalf of the petitioners herein to the Respondents 3 & 4, seeking a sum of Rupees</p>

		1,00,00,000/- (1 Crore), by way of Compensation, to be paid to the petitioners herein within a period of 30 days, from the service of the said notice. The said notice was also sent to the said respondents via registered post (Registered Post A/D) on 23/10/2020. The same was delivered at their office on 26/10/2020. However, the Respondents 2 & 3 neither responded nor ever acted upon the said notice.
5.	--	Hence, this writ petition.

Dated: [/12/2020]

[SHASHWAT ANAND] [ANKUR AZAD]

Advocates

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. WRIT PETITION NO. _____ OF 2020

(Under Article 226 of Constitution of India, 1950)

District : Moradabad

1. Laxmi Devi Shukla (mother),
 2. Rajeev Shukla (father),
 3. Nandini Shukla (sister),
 4. Akshay Shukla (brother),
- { Apar Shukla was the eldest of three siblings. }

All, dependants of Apar Shukla, since deceased,

... PETITIONERS

Versus

1. State of U.P., through the Secretary, Urban Development Department, Govt. Of Uttar Pradesh, Secretariat – Lucknow.
2. Nagar Nigam, Moradabad, through the Municipal Commissioner, Moradabad – 244001.
Email: moradabagnagarnigam@gmail.com.
3. Municipal Commissioner, Nagar Nigam, Moradabad – 244001.
Email: moradabagnagarnigam@gmail.com.
4. Commissioner, Moradabad Division, Moradabad.
Email: commmor@nic.in.

... RESPONDENTS

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, SEEKING COMPENSATION ON ACCOUNT OF TRAGIC DEMISE OF APAR SHUKLA, MAULED TO DEATH BY A STRAY BULL, OWING TO DEADLY POT-HOLE, ATTRIBUTABLE TO THE SHEER NEGLIGENCE OF THE RESPONDENTS.

**TO,
THE HON'BLE THE CHIEF JUSTICE AND
HIS LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE COURT, AFORESAID.**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED,**

MOST RESPECTFULLY SHOWETH:

1. That, this is the first writ petition of the petitioners, filed in this Hon'ble High Court with regard to the cause of action or matter(s) contemplated and the reliefs claimed herein.
2. That, the petitioners have not received any notice of caveat in this matter, lodged by the respondents, jointly or severally, or sent by them directly or on their behalf through their counsel(s).
3. **That, by means of this writ petition, the petitioners are seeking:** payment of Compensation, *infra*, on account of gruesome demise of Apar Shukla, since deceased, the Sole Bread-Earner in the family of the petitioners, mauled to death by a stray bull owing to a deadly pot-hole and Sheer Negligence of Municipal Authorities (Respondents 2, 3 & 4).

FACTS OF THE CASE:

4. That, Apar Shukla, since deceased, aged about 27 years, the son/brother of the petitioners, as shown in the caption clause, was a budding entrepreneur with a bright future ahead. He had been running a Jeans-Factory at Noida, U.P., through his Firm under the name and style of "Nandishi Lifestyle LLP" having Owing to the lockdown and consequent temporary-closure of his factory he had come to his native place, Moradabad. Apar was a very promising young man full of big dreams.

5. That, the petitioners 1 & 2, respectively, are old and aged mother and father, the petitioner 3 is the young unmarried sister and the petitioner no. 4 is the brother of the deceased, i.e., all of whom were dependant for their survival on the deceased (*supra*). He was carrying the entire burden of the petitioners on his shoulders. Now, all is lost and snatched away by the talons of misfortune and tragedy and the wretched petitioners have been left to helplessness and beggary at the mercy of fate, since the moment the cruel death laid its cold hands on the head of Apar.

6. That, on the night of 01/09/2020, at about 10:00 PM, the deceased, was returning home on his two-wheeler, after dropping his friend off at his house. Upon reaching the main road, in front of CL Gupta World School, he encountered a deep pot-hole in the middle-left of the road, which was obscured and almost invisible on account of the power-cut at that time.

7. That, the deceased, could not observe the said pot-hole and could make it out only upon reaching the damned spot, almost about to fall into the same. However, to save himself from falling into the pot-hole, the deceased tried to manoeuvre his two-wheeler away from the pot-hole by taking a sharp turn. Unfortunately, in his effort in the said behalf, he collided head-on with the horns of a stray bull, standing alongside, which too was not visible owing to the stark darkness. Accordingly, the

deceased suffered grievous ante-mortem injuries, a fasciculus of which is set down below:

- i. Lacerated wound **12 x 8 cm cavity-deep**, present in the front-left side of his Upper Abdomen.
- ii. His intestines, omentum and stomach was protruding out, about **11 cm** about umbilicus.
- iii. His small intestine, liver and spleen were lacerated.

A true copy of the Post Mortem Report dt. 02/09/2020 of the deceased is germane and accordingly, the same is being filed herewith and marked as **ANNEXURE NO. 1** to the instant petition.

8. That, Apar Shukla, since deceased, was rushed to the hospital, i.e., Cosmos Hospital, where he was declared brought dead.

A true copy of the Death Certificate(s) of the deceased issued by the Mukti Sthal, Moradabad dt. 02/09/2020, Cosmos Hospital dt. 09/09/2020 and Nagar Nigam, Moradabad dt. 16/09/2020, is being filed herewith and marked as **ANNEXURE NO. 2** (colly) to the instant petition.

9. That, factors precisely contributing to the tragic end of the life of the son/brother of the petitioners, as shown in the caption clause, are three-fold:

- a. Deadly, negligently uncovered pot-hole(s),
- b. Dangerous stray animal(s), freely roaming, in residential area, and

c. Power-cut of street-lighting on the main-road, resulting in complete darkness,

all of which are bounden statutory and constitutional duties of the Municipal Corporation (Nagar Nigam) to take care of and maintain. However, in the instant case, it is a clear case of gross negligence on the part of the Municipal authorities (Respondents 2, 3 & 4), who palpably failed to fulfil their binding obligation(s), resulting in the shattering and gruesome demise of the young and promising Apar Shukla.

10. That, the Municipal/Nigam authorities (Respondents herein), realizing their faults and lapses, due to apathy, insensibility and negligence in performing their beholden duty, and apparently, in order to thwart any further mishap(s) which might occasion, after a few days filled the fateful pot-hole with earth, which ensued the daunting and appalling death of (Late) Apar Shukla. The rest of the road, however, still endures a dilapidated state, and even the particular pot-hole (*kaccha*-filled) has begun to erode and deepen again.

11. That, in the wake of the unfortunate incident, *supra*, the local newspapers, *inter alia*, Dainik Jagran, Amar Ujala, Hindustan, etc. covered the grievous, mournful and disturbing incident and the epidemic of pot-holes and stray animals, at a considerable length, as a continuous campaign against the laxity, maladministration, unconcern, inattention and neglect of the State and Municipal Authorities, in fulfilling their requisite duties.

A true copy of the coverage by the local newspapers as to the epidemic of deadly potholes and stray animals is germane and the same is being filed herewith and marked as **ANNEXURE NO. 3** (colly) to the instant petition.

12. That, in the light of the foregoing facts and circumstances of the case, it is conspicuous that due to the sheer negligence on the part of the Municipal Corporation/Nagar Nigam authorities, Apar Shukla, since deceased, met with the fatal accident and thus lost his life in the most horrifying and macabre of ways.
13. That, significantly, the petitioners 1 & 2 had taken a loan of Rs. 20 Lakhs/- from Dena Bank on 20/06/2019, by mortgaging their residential house as a security therefor, to fund the setting up of the factory of their son, the deceased, which sum of money was spent in the setting up and installation of the Jeans-factory and now has all gone down the drain owing to the negligence and omissions of the Respondents. A true copy of the Letter of Sanction of the Mortgage Loan dt. 20/06/2019 is being filed herewith and marked as **ANNEXURE NO. 4** to instant petition.
14. That, in view of the above, a legal notice dt. 14/10/2020 was tendered (via email) on behalf of the petitioners herein to the Respondents 3 & 4, seeking a sum of Rupees 1,00,00,000/- (1 Crore), by way of Compensation, to be paid to the petitioners herein within a period of 30 days, from the service of the said notice. The said notice was also sent to the said respondents via registered post (Registered Post A/D) on

23/10/2020. The same was delivered at their office on 26/10/2020. However, the Respondents 2 & 3 neither responded nor ever acted upon the said notice.

A true copy of the legal notice dt. 14/10/2020 along with postal receipt and proof of delivery downloaded from the Indian Postal Service website is being filed herewith and marked as **ANNEXURE NO. 5** to this petition.

15. That, legally speaking, it is submitted that the respondents owe a legal duty towards the persons generally, to keep the roads in the city free from pot-holes and stray animals, and thereby to ensure the safety, security and well-being of every Tom, Dick and Harry.

COMPENSATION FOR BREACH OF RIGHT TO LIFE UNDER

ARTICLE 21:

16. That, owing to the sheer negligence and omissions on the part of the Respondents in the fulfilment of their statutory obligations and bounden duties, the fundamental right to life of the deceased was abruptly extinguished, giving rise to their liability to make payment of compensation to the petitioners, who were so completely dependent and reliant on the deceased for their daily bread and survival.
17. That, the Supreme Court has consistently held that a public law remedy is available under Article 226 of the Constitution of India to seek compensation on account of violation of fundamental rights under

Article 21 of the Constitution of India. The Apex Court in *Nilabati Behera (smt) v. State of Orissa*, (1993) 2 SCC 746, in paragraph 17 observed thus:

*“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. That, further, in *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416, the Hon’ble Supreme Court has held that in case of violation of any fundamental rights, compensation can be awarded under public law,

which is exclusive of the remedy available in private law for tortuous negligence. It was observed that:

“44. Grant of compensation in proceedings under Article 21 and 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.”

19. That, in **Shakuntala v. Govt. Of NCT of Delhi and ANR. (W.P. (C) 13771/2006)**, it was observed that the concept of compensation under public law must be understood as being different from the concept of damages under private law. Compensation under public law must not be merely seen as the monetary equivalent for compensating towards the injury caused, but also understood in the context of the failure of the State or state agency, to protect the valuable fundamental rights of the citizens.

20. That, in **Sri. Vijayan Menon & ORS. vs Secretary, Urban Development Department Vikasa Soudha, Bangalore (WP 42927/2015)**, the Karnataka High Court vide its order dt. 31/07/2020, adjudged the Bengaluru Municipal Corporation (BBMP) liable to pay compensation to citizens who suffer loss of life or injuries owing to bad condition of roads on account of violation of their fundamental rights guaranteed under Article 21 of the Constitution, and held that:

“14. During the last three or four decades, the Apex Court has considerably extended the scope of the right to life guaranteed by Article 21 of the Constitution of India. The Apex Court has

held that the right to life as guaranteed under Article 21 of the Constitution of India includes a right to live a meaningful and dignified life. After all, the footways or footpaths are provided so that the citizens can comfortably walk from one place to another. The streets are provided for the citizens so that they can travel comfortably by using vehicles. If there are potholes on the footpaths or on the streets, or if the same are not in good condition, the life of the citizens is exposed to danger. There are number of cases wherein, due to bad condition of the roads, accidents have happened resulting in either loss of human life or causing injuries to the citizens more so, in case of persons plying or traveling by two-wheelers. Hence, exposing the citizens to any danger due to bad condition of streets will amount to violation of their rights under Article 21. In other words, a right to have streets including footways in a good and reasonable condition will have to be held as an essential part of the fundamental rights conferred on the citizens under Article 21 of the Constitution of India.

.....

19. *The citizens have a right to seek a reasonable compensation from the State or its agencies which are responsible for violating the fundamental rights by taking a recourse to a remedy under Article 226 of the Constitution of India. It is high time that the citizens become aware of their rights. Even the officers of Bruhat Bengaluru Mahanagara Palike (BBMP) should be made aware of the right available to the citizens to seek compensation on account of violation of the fundamental rights guaranteed under Article 21 of the Constitution of India. After all, the citizens are tax payers and their lives are not cheap. If only because of the failure of the Municipal Authorities to perform their elementary obligation of maintaining the streets in a proper condition, if somebody is deprived of his/her life or suffers injury, it will give a cause of action to claim compensation.*

20. *Therefore, we make it very clear that in the event any citizen suffers loss due to the failure of the BBMP and its Officers to*

maintain the streets in a good condition, they can always have a remedy of seeking compensation.

21. When we have laid down that it is a fundamental right of the citizens to have streets and footpaths in a reasonably good condition, it is not sufficient that the same are pothole-free, but the streets and footpaths must be properly leveled so that the citizens can comfortably travel either by walk or by use of vehicles. Maintaining the streets free of potholes and in a reasonably good condition are the statutory and constitutional obligation of the BBMP.”

21. That, in **W.P. (C) No. 1077/2007, Madhu Kaur vs Govt. of NCT of Delhi & ANR.**, the Delhi High Court in paragraph 16 of its judgement while awarding compensation in case of death of the petitioner’s son owing to bad condition of the roads, who got imbalanced and died after hitting a pit (khada), held that:

“16. The respondent authorities should be conscious and aware of their duty to maintain roads and ensure that the road surface does not have any pits or khada so as to cause accidents, thus resulting in injuries and even loss of life. It is the obligation and responsibility of the road owning agencies to ensure that the roads are maintained properly and repairs undertaken. Even if they have entered into third party contracts for road maintenance, road users should not suffer injuries fatal or otherwise because of lack of maintenance, proper care and repairs. In case road is found to be damaged, necessary caution board/sign boards or barricades should be fixed. In case accidents take place as a result of negligence and failure to maintain roads, damages can always be awarded to persons who have suffered or lost a near and dear one. Loss of life because of negligence of state instrumentalities results in violation of right to life and liberty under Article 21 of the Constitution. In such cases of violation of fundamental right to

life, a High Court under Article 226 of the Constitution has power to award compensation and direct the State instrumentality or its servants to ensure enforcement of fundamental rights. This remedy is available in public law.”

22. That, it becomes important to note Justice Oka’s observation in ***High Court On Its Own Motion vs State Of Maharashtra And Ors (20 May, 2015)***, wherein he opined that it is high time that all concerned clearly understand that a right to have properly maintained roads is a part of fundamental right guaranteed by Article 21 of the Constitution of India and in the event any loss is caused due to its violation, the citizens have a right to seek compensation...Existence of such fundamental right creates corresponding obligation in all the authorities which are "State" within the meaning of Article 12 of the Constitution of India. For the infringement of the fundamental right guaranteed under Article 21 of the Constitution of India, a citizen can demand compensation apart from seeking the enforcement of the right. Moreover, a citizen has a right to make grievances regarding the violation of such right and get the grievances redressed.

Most Importantly, one of the directions given by Justice Oka in the abovementioned case is that all the Municipal Corporations which are parties to the PIL shall maintain all the streets/roads including footways/ footpaths within its jurisdiction in good and proper condition. It shall be the responsibility of the Municipal Corporations to keep the roads and footpaths properly levelled and surfaced. It shall be their responsibility to ensure that potholes and ditches thereon are properly

filled in. The work of filling in the potholes shall be carried out scientifically as an ongoing project.

23. That, it is noteworthy, that the relief of compensation under public law, for injuries caused on account of negligent action, or inaction or indifference of public functionaries or for the violation of fundamental rights is a part of the evolving public law jurisprudence in India. The powers of the High Courts and the Supreme Courts under Article 226 and Article 32, respectively, to mould the reliefs so as to adequately compensate the victims, has been affirmed by the Supreme Court on numerous occasions in matters, including *Common Cause, A Registered Society v. Union of India*, (1999) 6 SCC 667, *Chairman Railway Board v. Chandrima Das*, (2000) 2 SCC 465, *Delhi Domestic Working Women's Forum V. Union of India*, (1995) 1 SCC 14; *D.K. Basu v. State of W.B*, (1997) 1 SCC 416; *Postsangbam Ningol Thokchom (Smt) And Another, Appellants v. General Officer Commanding*, 1997 (7) SCC 725; *Rudul Shah V. State of Bihar*, (1983) 4 SCC 141, etc.

Dereliction of Duty to Take Care on the Part of The Authorities

24. That, Chapter V of the Uttar Pradesh Municipal Corporations Act, 1959 [U.P. Act No. 2 of 1959] under Section 114 provides for obligatory duties of the Corporation, according to which, it shall be incumbent on the Corporation to make reasonable and adequate provision for:

“114. Obligatory duties of the Corporation.— It shall be incumbent on the Corporation to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely,—

(ix) the lighting of public streets, Corporation markets and public buildings and other public places vested in the Corporation;

(xxiv) the removal of obstructions and projections in or upon streets, bridges and other public places;

(xxix) the construction, maintenance, alteration and improvement of public streets, bridges, sub-ways, culverts, causeways and the like;”

25. That, apart from the above, Chapter XII dealing with “Construction, Maintenance and Improvement of Streets”, under Section 277(1) provides for ***‘Power to prohibit use of public streets for certain kinds of traffic,’*** and the same reads as under:

“277 (1). It shall be lawful for the Municipal Commissioner with the sanction of the Corporation to (a) prohibit vehicular traffic in any particular public street vesting in the Corporation so as to prevent danger, obstruction or inconvenience to the public by fixing up posts at both ends of such street or portion of such street; (b) prohibit in respect of all public streets, or particular public streets, the transit of any vehicle of such form, construction, weight, or size or laden with such heavy or unwieldy objects as may be deemed likely to cause injury to the roadways or any construction thereon, or risk or obstruction to other vehicles or to pedestrians along or over such street or

streets, except under such conditions as to time, mode of traction or locomotion, use of appliances for protection of the roadways, number of lights and assistants and other general precautions and the payment of special charges as may be specified by the Municipal Commissioner generally or specially in each case.”

26. That, further, Section 310 of the said Chapter mandates the Municipal Commissioner to ensure proper lighting on the public streets, and the same reads as follows:

*“310. **Public streets to be lighted.** - (1) The Municipal Commissioner shall –*

(a) take measures for lighting in a suitable manner the public streets, Corporation gardens and open spaces and Corporation markets and all buildings vesting in the Corporation;

(b) procure, erect and maintain such number of lamps, lamp-posts and other appurtenances as may be necessary for the said purpose; and

(c) cause such lamps to be lighted by means of oil, gas, electricity or such other light as the Corporation shall from time to time determine.

(2) The Municipal Commissioner may place and maintain electric wires for the purpose of lighting such lamps under, over, along or across, and posts, poles, standards, stays, struts, brackets, and other contrivances for carrying, suspending or supporting lamps or electric wires in or upon any immovable property without being liable to any claim for compensation therefor:

Provided that such wires, posts, poles, standards, stays, struts, brackets and other contrivances shall be so placed as to occasion the least practicable inconvenience or nuisance to any person.”

27. That, undisputedly, the provisions, *supra*, obligate the respondents to mandatorily maintain and improve the road conditions and eliminate any menacing obstructions, including stray animals.

In the above context, the law laid down in ***L.K. Koolwal v. State of Rajasthan***, AIR 1988 Raj 2, is pertinent to mention:

“It is primary, mandatory and obligatory duty of Municipality to keep city clean and to remove insanitation, nuisance etc. The Municipality cannot take plea whether funds or staff is available or not.”

It was further observed in the case aforesaid, that:

“9. It is a serious matter when the dogs and other animals suffering from rabies bite animals and persons. The duty becomes more onerous on the respondents with regard to the dogs and such animals. The staff cannot say that its duty is complete if action is taken only on complaints. They must not sit in the office but should continuously take round of the city. If any inaction is found on the part of the staff, the respondents are bound to take disciplinary action against such staff. If still any accident happens, then the injured person or relative of the deceased person would be competent to invoke the provisions of Section 188 of IPC against such a negligent staff.

28. That, further in the case of **Sudhir Madan & Ors. v. Municipal Corporation of Delhi & Ors.**, the Apex Court held that the citizens have a fundamental right to use the roads, parks and other public conveniences provided by the State. If the streets or footways are in bad condition, the citizens are deprived of the effective use of the same thereby infringing their constitutional rights. If roads are not in good condition or if roads are not sufficiently lighted or if the same are full of potholes, they expose the citizens to a grave danger.

29. That, this Hon'ble Court in *Dr. C. B. Singh vs Cantonment Board, Agra (AIR 1974 All 147)*, has held that:

“22. ...If there is a legal obligation to do something, omission to do so is negligence provided the accident can be attributed to it. The public has a right to use the roads for all reasonable purposes and if it is established on the facts of the case that the Board or the local authority has not sufficiently discharged, its obligation to keep the road reasonably free from danger, negligence on its part cannot be doubted. There is no principle of law which enjoins on the users of the road to be extra-astute. A driver, prudent and reasonable, is not expected to drive on the assumption that he would meet with improbable obstructions on the highway, otherwise there would be impetus to law breakers. A person driving the car at night has a right to assume that the road ahead of him is bereft of obstructions and that dangers around are indicated by proper safeguards or forewarning in the shape of signals by light etc. This implies that there should be no unlighted object left on the road at night. The visibility of an obstruction to a person driving the vehicle must be fully assured by adequate precaution. Authorities responsible for managing the roads cannot take shelter under plea that the driver should have seen the obstruction. Such complacency on the part of a local authority or Board does not possess the sanction of law.”

30. That, notably, in *Forbes v. Lee Cons Board, (1879) 4 EX. D. 116*, it was observed that a public authority authorized to make a project and take tolls is impliedly bound to keep it in proper repair. Further, **Lord Cairns** in *Julius v. Lord Bishop of Oxford, (1874-80) All ER Rep 43 (HL)*, stated that:-

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done,

something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed to exercise the power when called upon to do so."

31. That, a similar view has been taken by the Supreme Court in *State (Delhi Administration) versus I.K. Nangia*, 17 (1980) DLT 164 (SC); AIR 1979 SC 1977 (vide para 15); *Tara Prasad Singh versus UOI*, AIR 1980 SC 1682 (vide para 14); *Ambica Quarry Works versus State of Gujarat*, AIR 1987 SC 1073 (vide para 13); *Superintending Engineer, Public Health versus Kuldip Singh*, AIR 1997 SC 2133, (vide p. 2137).
32. That, despite the obligations, generally speaking, the authorities did not abide by or keep up to the role, earnestly, that was expected of them as per the standard set by the law of the land. Such apathy and laxity on the municipal authorities' part, resulted in the ill-fated bereavement of a young, promising, earning man: the lodestar of the petitioners' family.
33. That, in the context of duty to maintain a road by the Municipal authority, free from hassle and danger, the Supreme Court has said in *S. Velayndha Charya v. High Way Department of South Arcot*, (1987) 3 SCC 400, eloquently, that the duty includes the "Duty to Warn".
34. That, the jurisprudential concept of negligence defies any precise definition. Eminent jurists and leading judgments have assigned various meanings to negligence. The Supreme Court in *Jacob Matthew v. State*

of Punjab & Anr., AIR 2005 SC 3180, quoting *Ratanlal & Dhirajlal*,

Law of Torts, observed that:

“Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. The definition involves three constituents of negligence:

- (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty;*
- (2) breach of the said duty; and*
- (3) consequential damage.*

35. That, **Lord Atkin** in *Donoghue v. Stevenson*, (1932) AC 562, propounded the following rule which has gained acceptance:

“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.”

He then defined “neighbours” as “persons so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

The Predicament of Disproportionate Amount of Stray Animals on Roads Causing Deaths and Injuries

36. That, it would be appropriate to mention *Common Cause (Regd Society) v. Union of India (UOI), & Govt. of NCT of Delhi, MCD and NDMC and Ram Pratap Yadav v. MCD (decided on 03.11.2000)*, whereby, the court was concerned with the precise duty of the MCD to maintain public roads and streets and ensure that they are free of stray cattle, for the safety of road users (which would include pedestrians, those plying vehicles and vendors on footpaths, etc.) it was observed that-

“14. The menace of stray cattle is hazardous and causes traffic snarls. It affects the safety of human beings on the road. It has the potential to cause accidents...”

16. It appears that the State and its agencies are impervious to the menace of stray cattle. They have not taken any effective steps to prevent the cattle and the bovine animals from taking to the roads. This has affected the quality of life of the citizens. The inaction of the state and its agencies impinges upon the fundamental right of the citizens under Article 21 of the Constitution. Under Article 48 of the Constitution, the State inter alia is required to protect and safeguard the forests and wild life. The State by neglecting to perform its duty in preventing the menace of stray cattle is avoiding implementation of Article 48 of the Constitution. It is the duty of the State to keep in view the directive principles of the State policy which are fundamental in the governance of the country and to apply those principles in making the laws...”

37. That, in **W.P. (C) 13771/2006, Shakuntala v. Govt. Of NCT Of Delhi and Anr.**, the court held that the respondents infringed in executing the public duty as a result of which, two bulls mangled the deceased causing

his untimely demise. This death has left the rest of the family to the mercy of fate, and to fend for themselves, as he was the sole breadwinner of the family and as such compensation should be awarded in their favour and against the respondents. Hon'ble Delhi High Court on the basis of the inquest report and post-mortem report, which established the case on facts that the death had occurred because of the attack by the bull, held the Municipal Corporation, Delhi negligent as it did not ensure proper supervision of the area, to avoid the menace of stray cattle by which such kind of accident could have been prevented, saving the life of a human being, held it liable to pay compensation to the tune of Rs. 10 lacs.

38. That, in Delhi High Court, *Parmeshwar v. Government of NCT of Delhi* Passed in *W.P. (C) 6396 of 2010, decided on 30.8.2013* deceased, who was 12 years of age, was sitting on the stairs near his residence when two wild undomesticated bulls appeared and began fighting. Though, the deceased tried to move towards his house to save himself but got entangled in the fight and was grievously hurt. He was taken to the hospital but at last succumbed to his injuries. The Court awarded Rs. 7.57 lacs on account of death of boy aged 12 years because there was no denial to the factual incident.
39. That, in *Sushma Rani v. State of Punjab & Anr.*, 2016 SCC Online P&H 19076, the petitioner, a housewife, had prayed for compensation for the death of her husband Vidya Bhushan, killed by a stray bull on 01.02.2014, when he was going to the construction site of his house. Justice Rakesh Kumar Jain in the High Court of Punjab and Haryana

allowed this petition for compensation relying on **Shakuntala v. Govt. of NCT of Delhi and Anr. (supra)** and **Parmeshwar v. Government of NCT of Delhi Passed in W.P. (C) 6396 of 2010 (supra)**.

40. That, in regard with another decisive facet of reason for injury in this matter that led to the death was the utter dearth of street lighting, which augmented the likelihood of the occurring catastrophic and inopportune incident.

In **Dr. C.B. Singh v. Component Band Agra 1974 ACJ 248 (supra)**, it was held that a local body was bound to make proper arrangements for lighting a street and a lapse that caused damage to the individual was held actionable.

Application of Strict Liability

41. That, the principle of strict liability shall also apply upon the respondents in the facts of the instant case, as was held in the decision of **Klaus Mittelbachert v. East India Hotels Ltd., 1999 ACJ 287 (Delhi)**, it was held that three conditions must be satisfied to attract the doctrine. They are: (i) the accident must be of a kind which does not ordinarily occur in the absence of someone's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (iii) it must not have been due to any voluntary action or contribution on the part of the victim.

42. That, in *Rajkot Municipal Corporation v. Manjulaben Jayantital Nakum*, 1997 ACJ 721 (SC), it was noticed that normally the public authorities are held liable only for positive action (mis-feasance) and not for omission (non-feasance). However, it is held that the ordinary principle of law of negligence applies to public authorities also. They are liable to damages because of a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. It is also pointed out in the said decision that where a public authority had decided to exercise a power and has done it negligently a person who had acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence.

43. That, in *Delhi Jal Board v. Raj Kumar & Ors.*, 2005 VIII AD Del 533, the petitioner, who while riding a scooter drove over a manhole, that was three inches below the regular road surface and met with an accident. The Court held the road maintenance agencies, viz. MCD as well as Delhi Jal Board who were required to maintain and repair manhole were found guilty and the compensation was awarded.

The Division Bench of the Delhi High Court observed that when power is given to do some act, it is often coupled with the duty to do that act properly. The Division Bench further observed that, the principle of strict liability as evolved in the case of *Rylands v. Fletcher*, (1866) LRI EX, would also be applicable. The court further held that in cases where the principle of strict liability applies, the defendant has

to pay damages for injury caused to the plaintiff, even though the defendants may not have been at any fault.

Relevance of Res Ipsa Loquitur

44. That, it is to be pointed out that it is very relevant to invoke the doctrine of *res ipsa loquitur*, considering the gruesome ill-fated death of the deceased and the obligations that rested upon the authorities. As Salmond in the Law of Torts (15th Edn.) at p. 306 states: “*The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused*”.
45. That, as noticed in *S. Vedantacharya v. Highways Department of South Arcot, 1987 ACJ 783 (SC)*, the authorities concerned must anticipate and foresee the reasonable dangers and should provide for necessary remedies. Therefore, it is evident from the above discussion that the defendants are liable for the accident, both on the principle of *res ipsa loquitur* and common law principle. Had the PWD taken sufficient care and precaution and maintained the road properly, the incident would not have occurred.
46. That, in another decision of *Darshan v. Union of India, 2000 ACJ 578 (Delhi)*, a case in which deceased had fallen into a manhole left uncovered by the authority concerned and the authority was held responsible. In the said case, it was observed as follows:

“Coming to the instant case, it is one of res ipsa loquitur, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the Red Fort in leaving the manhole uncovered. The dereliction of duty on their part in leaving death trap on a public road led to the untimely death of Skattar Singh. It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and far reaching. It would, undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Accordingly, Article 21 of the Constitution is attracted and the petitioners are entitled to invoke Article 226 to claim monetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights.”

47. That, **Lord Reid** in ***British Transport Commission v. Gourley, (1955)***

3 All ER 796, said that: *“The general principle on which damages are assessed is not in doubt. A successful plaintiff is entitled to have awarded to him such a sum as will make good to him the financial loss which he has suffered, and will probably suffer, as a result of the wrong done to him for which the defendant is responsible... Such damages can only be an estimate, often a very rough estimate, of the present value of his prospective loss.”*

48. That in the facts and circumstances of the case, it is picturesque that there was a palpable negligence on the part of the respondents in maintaining the roads and making them pothole-free, taking stray animals off the roads and ensuring proper lighting on the roads, owing to the cumulative effects of all those factors, the deceased son/brother

of the petitioners lost his life in the most heart-rending of ways. Thus, the respondents are liable to compensate the petitioners, both jointly and severally, so as to adequately reimburse the abysmal loss caused to them, so macabre as would haunt them for the rest of their lives.

49. That, the petitioners have no other equally efficacious and alternative remedy except to invoke the extraordinary jurisdiction of this Hon'ble Court under Art. 226 of the Constitution of India, *inter alia*, on the following grounds: –

GROUND

- i. **BECAUSE**, the law obligates the respondents to well-maintain roads and keep them free from hassles, pot-holes and obstructions, and maintain the roadside pavements and street-lights, and to keep the city free from the menace of stray animals, keeping in view the safety, security and well-being of the commuters and citizens.
- ii. **BECAUSE**, Apar Shukla, since deceased, lost his life owing to the reasons and in the manner, *supra*, on account of which the entire family has been shattered and the petitioners have been rendered destitute and left to starvation, misery and death.
- iii. **BECAUSE**, the respondents are liable to pay exemplary compensation to the petitioners for their acts of negligence, disclosed hereinbefore, which culminated into the extinction of the Right to Life of Apar Shukla, their son/brother (as shown in the caption clause), guaranteed under Article 21 of the Constitution of India.

PRAYER

It is, therefore, Most Respectfully prayed, that this Hon'ble Court may be graciously be pleased: -

- (i) To issue a writ, order or direction in the nature of Mandamus, commanding the respondents to pay a sum of Rs. 1,00,00,000 (1 crore) to the petitioners as compensation; and/or
- (ii) To issue any other and further writ, order, or direction, in addition to or in substitution for, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and
- (iii) To award the costs of this petition.

Dated: [/12/2020]

[SHASHWAT ANAND] [ANKUR AZAD]

DRAWN BY:

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