

HIGH COURT OF TRIPURA
AGARTALA

IA No.1/2020 in WP(C)(PIL) No.4/2020

Sri Pulak Saha, S/o Sri Nakul Chandra Saha, resident of Radhanagar,
P.O. Kunjaban, P.S. – West Agartala, District – West Tripura,
Pin – 799 006.

..... Applicant(s).

Vs.

1. The State of Tripura
to be represented by the Principal Secretary, Department of Health,
Government of Tripura, New Secretariat Building, New Capital
Complex, Kunjaban, P.S. New Capital Complex, Agartala, West
Tripura, Pin – 799 010.
2. The Director, Department of Health, Govt. of Tripura, Gorkhabasti,
P N Complex, P.O. Kunjaban, Pin – 799 006.
3. The Director, Department of Fire, Govt. of Tripura, Agartala, West
Tripura.
4. The Officer in charge, Maharajganj Bazar Fire Station, Department of
Fire, Govt. of Tripura, Agartala, West Tripura.
5. The Principal, AGMC & GBP Hospital, Govt. of Tripura, Agartala,
West Tripura.
6. The Medical Superintendent, AGMC & GBP Hospital, Govt. of
Tripura, Agartala, West Tripura.
7. The Director General of Police, Govt. of Tripura, O/o the DGP,
Akhaura Road, Agartala, West Tripura.
8. The Superintendent of Police, West Tripura District, Govt. of Tripura,
Agartala, West Tripura.
9. The Officer-in-Charge, East Agartala Police Station, Govt. of Tripura,
Agartala, West Tripura.

..... Respondent(s).

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HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE JUSTICE MR. S G CHATTOPADHYAY

For the applicant(s) : Mr. P Roy Barman, Advocate.
For the respondent(s) : Mr. Debalaya Bhattacharjee, Govt. Adv.
Date of hearing : 7th December, 2020.
Date of order : 4th January, 2021.
Whether fit for reporting : Yes.

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(Akil Kureshi, CJ).

Applicants have prayed for directions to pay interim compensation of Rs.15,00,000/- to the mother of deceased Bhaskar Debroy pending further consideration of the public interest petition.

[2] Briefly stated the facts are as under :

Bhaskar Debroy was an advocate. He joined the bar in the year 2015. His father had died when he was young. He was the only child of his widowed mother. At late night on 6th March, 2020 it appears that Bhaskar Debroy had accidental injuries while he was travelling on his motorcycle. The personnel of Fire Brigade department helped shift injured Bhaskar Debroy to AGMC & GBP Hospital late at night. By all accounts it appears that when the patient was brought to the hospital he was still conscious and coherent. While under treatment, his condition

deteriorated and at around 3.20 a.m. on 7th March, 2020 he was declared dead.

[3] The public interest petition is filed by an individual claiming to be involved in social service in the locality. In the petition, he has sought to project the inaction and negligence on part of the doctors and hospital administration which according to him, led to the unfortunate pre-mature death of a young promising lawyer who was the sole source of financial and emotion support for the widowed mother. Prayers made in this PIL include those for conducting a detail inquiry into the allegations of medical negligence, formation of a special investigation team for investigating into a complaint of commission of offence under Section 304 Part II read with Section 34 of IPC and for payment of compensation of Rs.50,00,000/- to the dependents of the deceased. By way of the interim application, prayer is made for payment of interim compensation to the mother of the deceased.

[4] The petitioner has relied on statements of members of the public present in the hospital when the deceased was brought there and certain other official documents. On the basis of such materials, the averments made in the petition in a nutshell are as under:

(i) On 7th March, 2020 the petitioner got information that advocate Bhaskar Debroy who was brought to AGMC & GBP Hospital had died late at night. The petitioner, therefore, rushed to the hospital at about 8.30 in the morning. The petitioner had access to the room where the dead body of Bhaskar Debroy was kept and found that he still was wearing his full clothes with belt and shoes on.

(ii) Examination of medical record of the deceased showed that at 12.59 on 7th March, 2020 condition of the patient was recorded to be conscious, drowsy but oriented with the history of alcohol consumption. At 1.15 a.m. his condition was recorded as semi-conscious, drowsy and oriented.

(iii) The patient was referred to G.B.P Emergency for further management but this was not followed up. Instead, he was taken to Medicine Unit where the attending doctor advised certain tests such as CVC, KFT, LFT, ECG etc. at 2.10 a.m.

(iv) At 3.00 a.m. his BP recorded was 80/60. At 3.10 a.m. it was noted that BP was not recordable. At 3.20 a.m. he was declared dead.

(v) According to the petitioner, Bhaskar Debroy was carrying a smart phone. Further, despite his conscious condition and availability of his phone no relatives were informed about the accident. He was carrying an identity card issued by the Bar Council of Tripura from which also the details of his family members could have been traced.

(vi) The petitioner has pointed out that an FIR has been registered for commission of offence under Section 304 Part II IPC with the intervention of the Superintendent of Police, West Tripura.

(vii) According to the petitioner, at the said hospital after 5.00 p.m. no specialist doctors are available and the Trauma Centre, Emergency Unit and other wards of the hospital are managed by PG medical students. As a result, Bhaskar Debroy was not attended by any specialist doctor which led to his tragic death.

(viii) The petitioner has referred to the Death Audit Report submitted by a team of doctors of the Government hospitals constituted by the Government to inquire into the cause of death.

On the basis of such materials, the petitioner has contended that the death of the advocate could have been avoided had the injured been given proper timely treatment. The prayers made in the petition, therefore, seek proper investigation into cause of death, compensation for the dependence of the deceased and general directions for systemic improvement in order to avoid recurrence of any such incident. In this order, we would focus only on the interim prayer for compensation.

[5] Along with an affidavit dated 20th August, 2020 of Smt. Anima Debbarma, Under Secretary to the Government of Tripura, Health and Family Welfare Department, a copy of the preliminary Death Audit Report dated 10th March, 2020 has been annexed. The final report of the audit team dated 12th March, 2020 is also annexed. In the preliminary report dated 10th March 2020, the audit team had carried out a fairly extensive inquiry. The final report was kept pending for availability of post-mortem report. From the preliminary report following important aspects emerge:

- (i) Patient Bhaskar Debroy was brought to the hospital by Fire Brigade personnel at late night on 7th March, 2020. At 12.59 Dr. Debasish Paul attended the patient and recorded that he was

conscious and had given the history himself of having consumed alcohol and there was no history of assault.

(ii) No investigation was initiated and no specialist was called by the said doctor. Dr. Abhijit Acharjee was on duty but did not attend the patient since he was busy with other patients.

(iii) At 1.15 a.m. on 7th March, 2020 it was recorded that the patient was semiconscious, drowsy and not oriented and the pupils were reacting sluggishly.

(iv) Dr. Ronit Das advised various investigations such as CBC, LFT, KFT, Xray, Ultrasonography of abdomen etc. but did not arrange to do the same.

(v) It was found that there was no Call Duty Roster of Medical Department. Even at the Medicine Ward there was no official Call Duty Roster.

(vi) The patient was shifted to medicine ward at 2.00 a.m. where he was attended by Dr. J Harish, PG, 1st year who diagnosed that the patient has acute alcoholic intoxication and started conservative treatment. He suggested baseline investigations such as CBC, LFT, KFT, Lipid profile, Xray Chest, ECG etc. but did not arrange to do the same.

(vii) While planning for investigation and radio imaging, the patient suddenly became disoriented at 3.00 a.m. and cardiopulmonary resuscitation was done and life supporting drugs were given but the patient died at 3.20 a.m. Dr. J Harish stated that the patient's condition had deteriorated suddenly. He was busy reviving the patient and, therefore, could not call the specialist.

[6] On the basis of such material collected during the course of the inquiry, the death audit team unanimously came to following conclusions :

- *The Fire brigade personnel could not inform in details about RTA/Physical assault about the Patient Mr. Bhaskar Debroy. (Annexure I-Statement of Computer Mr. Amir Sohel).*
- *No proper history was available as there were no patient party. But Dr. Debasish Pal who first examined the patient managed to take history from the patient who was conscious and oriented at that moment. History reveals that the patient had consumed alcohol but no history of RTA and Assault was given.(Annexure II-Statement of Dr. Debasish Paul).*
- *Physical examination was not done systematically by all the on duty Doctors who had attended the patient Mr. Bhaskar Debroy.*
- *No investigations were advised at Trauma centre, neither specialist call was initiated by Dr. Debasish Paul.*

- *Investigations was advised at Emergency by Dr. Ronit Das but not initiated to arrange the same, neither specialist call was sent.*
- *No official call duty roster is available at present, but instead PGs are directed to call any one of the faculty in case of emergency. (Annexure XIX – Statement of Dr. Arunabha Das Gupta)*
- *There was a delay in initiating treatment right from the entry of the patient at trauma centre till reaching Medicine ward. The patient could have been managed at Trauma/Emergency block itself reducing transit time.*
- *Dr. J Harish though initiated the treatment after receiving the patient Mr. Bhaskar Debroy but he also did not examine systematically and did not taken second opinion from senior faculty. He though advised emergency Investigations but not initiated to arrange the same.*
- *On thorough scrutiny of Admission ticket, OPD ticket, Direction sheet along with statements of persons concerned it is difficult to opine regarding medical negligence as well as exact cause of death of Mr. Bhaskar Debroy.*
- *For that a letter is issued to SP West to provide a copy of P M Report, Photographs taken by Investigating officer and any other relevant documents to compare the statements and to give final opinion. (Annexure XXXI & XXXII-Peon book copy & Letter given to SP west).”*

[7] In the final report, the death audit team referred to the post-mortem report in which as many as 17 external injuries and following internal injuries were recorded :

“External injury – Multiple abrasion and bruise all over the body of total 17(seventeen) numbers along with rotation of left lower limb outwards eventually found to be # Left Femur.

Internal injuries –

- *Multiple Rib fracture on the Rt. Side of Chest wall along anterior axillary line involving 3rd, 4th & 5th Ribs and 4th to 8th ribs along the Para vertebral line with fracture manubrium right.*
- *Laceration of base of Rt. Lung with one litre of blood and clot in pleural Cavity.*
- *Multiple Liver laceration of right lobe of size 20 cm × 10 cm × 6 cm along with some small pieces found in the peritoneal cavity.*
- *Patchy subarachnoid hemorrhages present over Lt. Parieto-occipital lobes.*
- *Abdomen-Peritoneal cavity contains 1.5 litres of blood and blood clots.*
- *Stomach-Contains semi digested food with alcohol smell positive with congested mucosa.*
- *Omentum-Bruising of greater omentum with blood clots present, mucosa congested.*
- *Right Kidney-Hematoma present over perinephric area.*
- *Viscera & Blood-Preserved for toxicological analysis.*
- *After thoroughly scrutinizing and comparing the Postmortem report with the bed head ticket, all statements, especially statements of doctors concerned it is clear that on duty concerned doctors of Trauma Centre, Emergency and Medicine department did not examine and investigate the patient properly and therefore missed multiple grievous injuries that eventually caused the death.”*

[8] On the basis of such further information, the Death Audit Team recorded following discrepancies in its said report dated 12th March, 2020 :

“There is remarkable discrepancy in between the provisional diagnosis as Alcoholic Intoxication mentioned in bed head ticket and cause of death due to shock and hemorrhage from multiple injuries caused impact of hard and blunt force. Viscera & Blood-Preserved for toxicology.

Reason behind the gap causing unfortunate and painful death of Mr. Bhaskar Debroy is due to system failure of not maintaining the norms of level 2 trauma centre as per guidelines which shows on call facility only for neurosurgeons and paediatrician. Rest of the Departments of Medicine, Orthopaedics, Anaesthetists must be present and cover 24 × 7 at Trauma Centre. (Annexure no-XXXIII-DGHS guideline Page no-21).

On investigation it is learnt that no faculties are posted at Trauma Centre rather the inexperience THS cadres not related to Medical College (AGMC), Intern and first year PG students are forced to cover the all the Units of medicine and all the Unit of Surgery at late evening and nights which is inhuman.

The faculties must share their responsibilities and DME, Principal and MS must immediately take initiative to rejuvenate the Level 2 Trauma Centre urgently to avert such type of incidences in future.

It is also observed that this type of incidents are on the raise and it will continue if the inexperience THS Cadre Doctors, PG Students, Interns are on duty without-faculties not below the rank of Asst. Professor, Senior Resident holding PG degree of the concerned Department who should be posted 24 × 7 at Trauma Centre as per guidelines.”

[9] In the post-mortem report dated 10th March 2020, a panel of 3 doctors had recorded following external injuries :

“7) Injuries :

- 1) Reddish colour abrasion measuring 1.5 cm × 0.5 cm is present on the right side of forehead, 3.5 cm from midline and 0.7 cm above the right eyebrow.*
- 2) Reddish colour abrasion measuring 05 cm × 4.5 cm is present on the back of right arm, just above the elbow joint.*
- 3) Reddish colour abraded bruise measuring 05 cm × 05 cm is present on the inner aspect of right elbow joint.*
- 4) Reddish colour abrasion measuring 03 cm × 0.2 cm is present on the back of right forearm, 8 cm below the elbow joint.*
- 5) Reddish colour bruise measuring 08 cm × 03 cm is present on the back of right forearm, just below injury no.4.*
- 6) Reddish colour abrasion measuring 9.5 cm × 2.5 cm is present on the back of right hand, extending from the wrist joint to the thumb.*
- 7) Reddish-blue colour bruise measuring 07 cm × 07 cm is present on the back of right hand, 1.5 cm below the wrist joint.*

- 8) *Reddish colour abrasion measuring 0.5 cm × 0.5 cm is present on the outer aspect of index finger of right hand, 5.5 cm below the base of finger.*
- 9) *Two reddish colour abrasions measuring 0.5cm × 0.4 cm and 0.9 cm × 0.5 cm are present on the outer aspect of middle finger of right hand, 2.4 cm apart and 04 cm below the base of finger.*
- 10) *Reddish colour abrasion measuring 0.7cm × 0.1 cm is present on the back of ring finger of right hand, just below the base of finger.*
- 11) *Reddish colour abrasion measuring 0.1 cm × 0.1 cm is present on the back of little finger of right hand, 01 cm below the base of finger.*
- 12) *Reddish colour abrasion measuring 21 cm × 07 cm is present on the inner aspect of left forearm, just below the elbow joint.*
- 13) *Reddish colour abrasion measuring 0.5 cm × 0.1 cm is present on the outer aspect of left forearm, 03 cm above the wrist joint.*
- 14) *Reddish colour abrasion measuring 0.3 cm × 01 cm is present on the back of left forearm, 01 cm below the elbow joint.*
- 15) *Left lower limb is apparently shortened and rotated outwards. On dissection, left femur bone is found fracture, 24 cm above the knee joint and the fractured fragments are displaced. The upper part of the femur bone is displaced outwards and the lower part is displaced inwards and upwards. Hematoma is present in the soft tissues and muscles around the fractured site.*

16) Reddish colour abrasion measuring 5.5 cm × 03 cm is present on the inner aspect of left knee joint.

17) Reddish colour abrasion measuring 04 cm × 2.5 cm is present over the medial malleolus of left ankle joint.

18) Reddish colour abrasion measuring 01 cm × 01 cm is present on the front of right knee joint.

All the above mentioned injuries are ante-mortem in nature and are of fresh in duration of age at the time of death and are caused by the impact of hard and blunt force.”

The cause of the death was shown to be shock and haemorrhage resulting from multiple injuries caused by impact of hard and blunt force. All the injuries were ante mortem.

[10] The Government had also set up a Magisterial inquiry which was conducted by District Magistrate and Collector, West Tripura, Agartala. He submitted his report on 24th August, 2020. The terms of reference included to find out circumstances into the cause of unnatural death of Bhaskar Debroy, to determine the sequence of events leading to his death and medical negligence, if any, during his treatment. The Magistrate recorded the statements of several witnesses and also relied on the Death Audit Report. His observations were that no physical examination was done systematically by all on duty doctors. No investigation was advised at Trauma Care Centre, neither specialist call was initiated by Dr. Debasish Paul. Investigation was advised at the

Emergency Block but it was not initiated or arranged. He unequivocally concluded that this was a case of medical negligence in providing standard care and treatment to the patient and such negligence led to the unfortunate death of Bhaskar Debroy. His conclusions in this respect are as under :

“So, here considering all the facts and evidence, finding of Death Audit Report, Post Mortem Report and summarizing the gist of all statements, I Dr. Mahatme Sandeep N, IAS, Magistrate find medical negligence in providing standard care and treatment to that injured patient namely Bhaskar Deb Roy and such negligence leads to unfortunate death to Late Deb Roy & I hold Dr. Debasish Paul, on duty Doctor of Trauma Care Centre, Dr. Ronit Das, Dr. Suman Nath, EMOs at Emergency Block of AGMC & GBP Hospital as responsible for such Gross Medical Negligence which leads to death of Bhaskar Debroy.”

[11] The police had also completed the investigation and submitted the charge sheet on 15th October, 2020 relevant portion of which reads as under :

“Hence, I do hereby submit charge sheet vide NCC PS Charge sheet No-064/2020 dated -15/10/2020 U/S-304A/34 of IPC in connection with New Capital Complex PS Case No.2020/NCC/042 dated 07/03/2020 U/S – 304(II)/34 of IPC against (1) Shri Suman Nath (26) S/O Shri Maniklal Nath of Bijoy Nagar PS – Sabroom, Junior Resident Doctor (Non-Academic) of AGMC & GBP Hospital (2) Mr. J Harish S/O

Jothimani, MBBS (Uder Post Graduate Training, Medicine) of AGMC & GBP Hospital No.6/15 Arasamarathu Veedhi, Virachilai Post, Virachilai Dist-Pudukkottai Tamil Nadu Pin – 622 412 (3) Shri Ronit Das (25) S/O Shri Ranjit Kumar Das of Bhattapukur near Kalibari PS – West Agartala, Junior Resident Doctor (Non-Academic) of AGMC & GBP Hospital (4) Dr. Debasish Paul (30) S/O Late Dinendra Paul of Vill : Kalachari, P.O : Manik Bhandar, PS – Kamalpur, Dhalai District, Medical Officer, Trauma Care Centre of AGMC & GBP Hospital (5) Dr. Abhijit Acharjee (30) S/o Shri Swapan Kumar Acharjee of Krishna Nagar Natun Pally PS – West Agartala, Medical Officer, Trauma Care Centre of AGMC & GBP Hospital.”

[12] Above noted materials clearly demonstrate that this was a case of medical negligence which resulted into the death of a young advocate and which death, going by the experts’ opinion, could have been avoided had proper timely investigations done and treatment given. In the present case, neither proper investigation was carried out nor adequate treatment administered. These observations and conclusions are based on following salient features of the matter which emerge from the Death Audit Report and the report of the Magisterial inquiry:

- (i) The patient was brought to the hospital late at night on 6th March, 2020 when he was still conscious and coherent. He was carrying a smart phone and identity card issued by the Bar Council. Under these

circumstances, it should not have been very difficult for the hospital administration to inform his relatives about the accident, which appears was not done.

(ii) All throughout he was attended by junior doctors and PG medical students and no specialist was available or called.

(iii) In fact it appears that at no stage the medical or paramedical staff realized the seriousness of his injuries and the possibility that he may be carrying serious internal injuries. He was simply treated conservatively for possible alcohol overdose.

(iv) Even if the patient was brought to the hospital, seemingly under influence of alcohol, multiple external injuries which the post-mortem report indicated should have been noticed. Even the most basic and trivial medical knowledge would tell us that such external injuries could be correlated to internal damage which was a matter of immediate investigation. For example, in the post-mortem report several abrasions and bruises were found all over the body including on the forehead.

Left femur bone was fractured above the knee. The medical team attending to the patient failed to notice these visible injuries including fractures.

- (v) Several investigations such as X-ray, Sonography and ECG were advised but not done. Unknown to the doctors, the patient was carrying serious internal damage. Multiple lacerations were found on the liver. The gallbladder was also seriously damaged. Total neglect and lack of proper line of treatment led to the death of the patient due to *“shock and hemorrhage resulting from multiple injuries caused by impact of hard and blunt force.”*

[13] The Death Audit Report and Magisterial inquiry both point in one singular direction of gross medical negligence. The police investigation also has resulted into filing of a charge sheet. Whether it is a collective failure and a case of systemic negligence or whether some individuals should carry greater burden of medical negligence, the time will tell. Nevertheless, inescapable conclusions that one would arrive at on the basis of the materials on record is that this was a case of negligence in treating the injured patient which led to his death. Going

by the version of the petitioner when he had the access to the dead body of the young advocate he was still wearing his full clothes with belt and shoes on which would indicate that the doctors did not even care to take a look at the full body of the patient. This would be in consonance with the fact that the visible external injuries including the fractures do not even seem to have been noticed by the treating doctors. Serious internal injuries had to be detected through proper investigation. Reports of Xray, Sonography and ECG though called for, these investigations were not conducted. There was no senior doctor or specialist available or summoned. All in all, the official respondents must carry the vicarious civil liability for such wrongs committed.

[14] With this background, we may address the issue of awarding compensation in the writ petition. Though rare, it is not impermissible, nor uncommon. Learned counsel for the petitioner has relied on certain decisions to which we may refer at this stage.

In case of *Leena Shamji Maru and Ors. Vs. B.Y. L. Nair Hospital and Ors.* in a judgment dated 17th September, 2019 in *Writ Petition No.2652/2018* Division Bench of Bombay High Court was dealing with a case of accidental death in a hospital run by Municipal Corporation of Greater Mumbai. A relative, Rajesh Maru, who was

attending to a patient being taken to MRI centre was carrying a metallic oxygen cylinder. Suddenly, on account of magnetic field of the MRI machine, the relative got trapped between the MRI machine and the oxygen cylinder. The oxygen cylinder on account of the impact started leaking. Rajesh Maru inhaled excessive quantity of oxygen which caused his death. His legal heirs and dependents sought compensation from the Municipal Corporation alleging negligence on part of the administration. The Court referred to several decisions on the question of awarding compensation in such cases in a writ petition including the case of *Municipal Corporation of Delhi Vs. Uphaar Tragedy Victims Association and Ors.* reported in (2011) 14 SCC 481 and awarded a compensation of Rs.10,00,000/- to the petitioners.

In case of *Uphaar Tragedy case* (*supra*) the Supreme Court had made following observations :

“96. Courts have held that due to the action or inaction of the State or its officers, if the fundamental rights of a citizen are infringed then the liability of the State, its officials and instrumentalities, is strict. Claim raised for compensation in such a case is not a private law claim for damages, under which the damages recoverable are large. The claim made for compensation in public law is for compensating the claimants for deprivation of life and personal liberty which has nothing to do with a claim in a private law claim in tort in an ordinary civil court.

97. This Court in *Union of India v. Prabhakaran Vidya Kumar* (2008)9 SCC 527, extended the principle to cover public utilities like the Railways, electricity distribution companies, public corporations and local bodies which may be social utility undertakings not working for private profit. In *Prabhakaran* (supra) a woman fell on a railway track and was fatally run over and her husband demanded compensation. Railways argued that she was negligent as she tried to board a moving train. Rejecting the plea of the Railways, this Court held that her "contributory negligence" should not be considered in such untoward incidents - the railways has "strict liability". A strict liability in torts, private or constitutional do not call for a finding of intent or negligence. In such a case highest degree of care is expected from private and public bodies especially when the conduct causes physical injury or harm to persons. The question as to whether the law imposes a strict liability on the State and its officials primarily depends upon the purpose and object of the legislation as well. When activities are hazardous and if they are inherently dangerous the statute expects highest degree of care and if someone is injured because of such activities, the State and its officials are liable even if they could establish that there was no negligence and that it was not intentional. Public safety legislations generally fall in that category of breach of statutory duty by a public authority. To decide whether the breach is actionable, the Court must generally look at the statute and its provisions and determine whether legislature in its wisdom intended to give rise to a cause of action in damages and whether the claimant is intended to be protected.

98. But, in a case, where life and personal liberty have been violated, the absence of any statutory provision for compensation in the Statute is of no consequence. Right to life

guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high, compared to the statutory powers and supervision expected from officers functioning under the statutes like Companies Act, the Cooperative Societies Act and such similar legislations. When we look at the various provisions of the Cinematographic Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and the Electricity Laws the duty of care on officials was high and liabilities strict.”

In case of ***Puli Raju Vs. Government of A. P. and Ors*** a Single Judge of Telengana High Court in a decision dated 18th February, 2019 had invoked the writ jurisdiction for awarding compensation to the family of the victim in case of medical negligence.

In case of ***Umakant Kisan Mane Vs. The Dean, Rajawadi Municipal Hospital and Ors.*** reported in ***2016 (2) Maharashtra Law Journal 266*** Division Bench of the Bombay High Court exercised writ jurisdiction for awarding compensation in case of medical negligence. The Court awarded the compensation of Rs.21,82,500/- to be paid to the petitioner. Following observations were made :

“12. If the medication had been given properly inside the vein and the doctors and nurses were not negligent, the injury would not have happened and the gangrene could not have set in and the fingers could have been saved. It is a clear case of gross negligence on the part of the doctors and the nurses of the respondents to allow this to happen. Moreover, from the report of the inquiry committee it appears that the doctors were negligent in informing the relatives of the petitioner about the nature of the ailment and the nature of the operation. Even proper form was not filled in because the consent form is in English whereas the patient's father has signed in Marathi. Paragraph 6 of the observation of the inquiry committee's report dated 11th February, 2003 states that "Consent form lacked the proper form, witness signature and doctor's signature. It could have been in Marathi". The inquiry committee has also noted that the relatives were not much concerned about the patient but at the same time that has no direct relationship with the events relating to gangrene of fingers. It is also observed that the patient was discharged against medical advice as per the wish of relatives but there is nothing on record to show why the patient was discharged after 2-3 days of amputation and the patient continued to attend the outpatient department after his discharge for receiving treatment.

* * *

15. There has been a breach of legal duty on the part of the respondents resulting in the petitioner losing his fingers of his right hand. In our view, due to this inaction on the part of the respondents, the fundamental right of the petitioner is infringed. The claim made in this petition is in public law, for compensating the petitioner, for deprivation of life and personal liberty. In this case, when the doctors were administering

medication which could cause injury if not properly administered, the principle of Res Ipsa Loquitur applies.”

[15] In the present case, the facts speak for themselves. It is a clear case where we can invoke the well-known and oft-repeated maxim of *Res Ipsa Loquitur*. Only question that remains is of assessing the interim compensation to be paid to the mother of the deceased. While doing so, one may base the calculations on the principles evolved in the context of motor accident claim cases of death due to negligence. The deceased was aged about 29 years and was a practicing advocate since about 5 years. He is survived by his sole dependent the mother, he himself was unmarried. As per settled principles, in such a case for choosing the multiplier, the age of the deceased and not that of the mother would have to be taken into consideration. For personal expenditure 50% of the income would be set apart for the deceased leaving the rest 50% for the mother. Even going by the modest estimate of the income of a lawyer with 5 years standing at Rs.10,00,000/- and providing for future rise in income as per the decisions of the Supreme Court in cases of *Sarla Verma and ors. Vs. Delhi Transport Corporation and anr.* reported in (2009) 6 SCC 121 and *National Insurance Company Limited vs. Pranay Sethi and ors.* reported in (2017) 16 SCC 680; added by compensation for conventional heads such as loss of estate and loss of

parental consortium estimated compensation for the mother would not come below Rs.10,00,000/-. By applying this rough and ready formula, in our opinion, the official respondents should be asked to pay interim compensation of Rs.10,00,000/- to the mother of the deceased. Awarding full compensation can be done only after bringing full evidence on record. For which it would be open for the dependent of the deceased to file appropriate civil proceedings. For the future financial safety of the mother of the deceased part of this compensation must be invested in fixed deposits. We must also clarify that the observations made in this order are in relation to the civil liability and we have not concluded the question of individual specific negligence of any of the medical, paramedical or administrative staff to the hospital. In case of criminal case as well as departmental inquiries, if instituted or which may be instituted hereafter, none of these observations would limit the defence of any one.

[16] In the result, interim application is disposed of with following directions :

- (a) The respondents No.1 and 2 shall pay compensation of Rs.10,00,000/- to Smt. Kankana Debroy, the mother of

deceased Bhaskar Debroy. Such sum shall be deposited before the Registry of this Court latest by 15th February, 2021.

(b) Upon such deposit a sum of Rs.3,00,000/- would be released in favour of Smt. Kankana Debroy through account payee cheque after due verification by the Registry. Remaining Rs.7,00,000/- would be invested in a fixed deposit in any nationalized Bank for a period of 5(five) years. The original fixed deposit shall be kept in custody of the Registrar(Judicial). Such fixed deposit shall not be liquidated or encashed before the period.

(c) Smt. Kankana Debroy would, however, receive periodic interest accruing on such fixed deposit. Upon completion of the period of 5(five) years, the maturity amount would be paid over to Smt. Kankana Debroy.

(d) These directions are for interim relief for the mother of the deceased. If she wants any further compensation, the same must be after bringing on record full material such as the income of the deceased etc. and which can be done in a properly instituted civil suit. It would be open for her to file such proceedings in which, if any order for payment of

compensation is passed, amount awarded in this order will be adjusted towards the final compensation that may be awarded.

Interlocutory application is disposed of accordingly.

(S G CHATTOPADHYAY, J) (AKIL KURESHI, CJ)

HIGH COURT OF TRIPURA



सत्यमेव जयते