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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

+ **W.P (C) 3622/2021, C.M. APPL 10990/2021**

**1. SMT. DEVIKA (WIDOW AGED ABOUT 32 YRS)  
W/O LATE SH. DINESH KUMAR**

**2. MS. URVASHI (MINOR AGED ABOUT 9 YRS)  
THROUGH HER MOTHER SMT. DEVIKA**

**3. MS. DESHA (MINOR DAUGHTER 6 YRS)  
THROUGH HER MOTHER SMT. DEVIKA**

**4. MR. NAKUL KUMAR (MINOR SON 2 YEARS)  
THROUGH HER MOTHER SMT. DEVIKA**

**5. SMT. CHARAN DEVI (MOTHER AGED ABOUT 54 YRS)  
W/O SH. KRISHAN PAL**

ALL R/O 504, AGAR NAGAR  
PREM NAGAR, SULEMAN NAGAR  
NANGLOI, DELHI-11086

.....PETITIONERS

*(Through: Mr. Nitin Jain and Mr. Madhav Aggarwal, Advs.)*

Versus

**1. DELHI JAL BOARD**

THROUGH ITS CHAIRMAN  
ROOM NO. 306, 3<sup>RD</sup> FLOOR,  
VARUNALYA, PHASE-II  
JHANDEWALAN, KAROL BAGH,  
NEW DELHI-110005



**2. GOVT OF NCT OF DELHI  
THROUGH-CHIEF SECRETARY  
DELHI 110054**

...RESPONDENTS

*(Through: Mr. Tushar Sannu, Ms. Pulak Gupta and Ms. Payal Rajput, Advs.)*

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% Reserved on: 14.05.2026  
Pronounced on: 29.05.2026  
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### JUDGMENT

By way of the present petition, the petitioners, who are the legal heirs of one Mr. Dinesh Kumar [**deceased**], are seeking compensation to the



extent of Rs. 50,00,000/- (Rupees Fifty Lakh only) for the death of the deceased on account of alleged negligence attributable to the respondents.

### **FACTUAL MATRIX**

2. Petitioner no. 1 is the wife of the deceased, whereas, petitioners no. 2 to 4 are their children. Petitioner no. 5 is the deceased's mother.
3. The case set up by the petitioners is that, on the intervening night of 17/18 April 2019, the deceased was returning home from his place of employment on his motorcycle when he met with a fatal accident on Main Hiran Kudna Road, Dhichoun Kalan, Delhi. According to the petitioners, respondent No. 1, namely Delhi Jal Board [**DJB**], had undertaken pipeline repair work in the area and, for the said purpose, had dug a deep excavation/ditch immediately in front of its office premises.
4. It is further the case of the petitioners that, prior to his demise, the deceased informed petitioner no. 1 that while he was riding back from work during the late hours of the night, he was momentarily blinded by the headlights of a truck approaching from the opposite direction, as a result whereof he was unable to notice the open ditch and consequently fell into the same along with his motorcycle. According to them, the circumstances leading to the accident clearly disclose gross negligence on the part of DJB in failing to secure the excavation site or provide any warning mechanisms for public safety.
5. The material placed on record further indicates that a PCR call was received at approximately 06:07 AM on 18.04.2019 reporting that an individual had been lying in the *nala*/ditch since the previous night. Pursuant thereto, FIR No. 0180/2019 [**FIR**] came to be registered at Police Station Baba Haridas Nagar under Sections 279 and 337 of the Indian Penal Code,



1860. The FIR records that the injured victim was found lying inside the ditch along with his motorcycle and was removed from the site in an unconscious condition. It is also specifically recorded therein that the injured was unfit to make any statement at the relevant time.

6. The record reveals that immediately after the incident, the deceased was taken to Rao Tula Ram Memorial Hospital for medical treatment and was, thereafter, shifted to Deen Dayal Upadhyay Hospital for further management. However, despite medical intervention and continued treatment, the deceased succumbed to the injuries sustained in the accident and left for his heavenly abode on 27.04.2019.

7. According to the petitioners, the deceased was the sole breadwinner of their family and owing to his death, the petitioners currently have no source of income. The deceased is stated to be thirty-seven years old at the time of the accident and had been working as 'Field Boy;' with 'M/s Airef Engineers Pvt. Ltd.', and was drawing a salary of Rs. 16,770/- (Rupees Sixteen Thousand Seven Hundred and Seventy Rupees only) per month, at the time of his demise.

8. DJB, in its counter affidavit, has sought to distance itself from any liability, and takes the stand that the aforesaid ditch had been dug by a third-party contractor who had been awarded a contract for improving the water supply network. According to DJB, any negligence therefore, which may have led to the death of the incident, could only be attributed to the said contractor and not the respondents. It is also stated that the contract with the third-party contractor provided that the contractor would indemnify the respondents against all claims arising out of the project. Therefore, the



petitioner ought to claim compensation from the third-party contractor, and ought to have necessarily impleaded it as a respondent.

9. Further, according to it, barricades had, in fact, been placed around the ditch by the contractor, and as per the petitioners' own case, the accident was caused due to the deceased's being blinded by the headlights of an oncoming truck. Therefore, as per DJB, negligence on the part of the deceased could not be ruled out insofar as he failed to stop his vehicle upon facing the oncoming headlights.

10. As per DJB, the petitioners have approached this Court belatedly, around three years after the demise of deceased, and therefore, the petition ought to be dismissed on the ground of delay.

11. *Per contra*, Mr. Nitin Jain, learned counsel for the petitioners, submits that the stand taken by DJB is a hollow defence taken with the sole purpose of shifting its liability to a private party. The duty to ensure public safety remains with the respondents, and any contract that they may enter into with third-party contractors would not absolve them of this responsibility. According to him, the respondent may subsequently recover the compensation amount from the contractor in separate proceedings.

12. He submits that the undisputed circumstances surrounding the accident would attract the doctrine of *res ipsa loquitur* and establish that the death of the deceased was on account of negligence by the respondents. According to him, the respondents ought to be held liable, even if negligence is attributable to the third-party contractor, applying the principles of strict and absolute liability.

13. This Court, on 18.05.2025, without going into the merits of the dispute, and since the petitioners were facing financial hardships, directed



the respondents to pay a sum of Rs. 50,000/- (Rupees Fifty Thousand only) as interim compensation. The said interim compensation has been paid to the petitioners.

14. I have heard learned counsel appearing for the parties and perused the record.

### **ANALYSIS.**

#### ***A. Whether the petitioner is disentitled to relief on account of delay in approaching the Court?***

15. At the outset, the preliminary objection pertaining to the aspect of delay is dealt with. It is seen that the deceased passed away in the year 2019, and the petitioners have approached this Court after a period of around two years in the year 2021.

16. It is pertinent to note that, in the *interregnum*, there was an outbreak of the COVID-19 pandemic across the globe, disrupting people's lives to a great extent. The Supreme Court, taking cognizance of the pandemic, in *Re: Cognizance for extension of limitation*, observed that the litigants are facing difficulties in approaching the Court, considering the situation at the time, and had passed various orders relaxing the limitation period in all legal proceedings between 15.03.2020 till 14.03.2021.<sup>1</sup>

17. The petitioners depended on the deceased for income. In this context, to expect them to necessarily approach the Court immediately after his demise, amidst the pandemic, would not require this Court to turn a blind eye to stark realities faced by the petitioners. The discretionary powers vested in this Court under Article 226 of the Constitution of India are to be

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<sup>1</sup> Order dated 08.03.2021 in *Suo Motu Writ Petition (Civil) No. 3 of 2020*



exercised in furtherance of the interests of justice and equity, rather than defeating legitimate claims on purely technical grounds.

18. It is trite law that although the provisions of the Limitation Act, 1963 do not strictly apply in writ proceedings, the underlying principles are considered while weighing equities. In circumstances such as in the present case, where the petitioners were grappling with bereavement, financial hardship, and the extraordinary difficulties posed by the pandemic period, some degree of delay, if any, deserves to be viewed with compassion and a justice-oriented approach. In view thereof, the Court finds that the petition has not been filed with unreasonable and unexplained delay, warranting dismissal at the threshold.

***B. Scope of the Court's power to grant compensation under Article 226 of the Constitution of India.***

19. Before proceeding to examine the facts of the present case, it is apposite to briefly survey the settled legal framework governing the grant of compensation in writ proceedings under Article 226 of the Constitution of India, particularly in cases where the death of a citizen is alleged to have occurred on account of the negligence of State instrumentalities. The genesis of such claims finds its source in the fundamental right to life guaranteed under Article 21 of the Constitution of India.

20. This Court, in *Shagufta Ali v. Government of NCT of Delhi and Ors.*,<sup>2</sup> undertook a delineation of the applicable legal principles while adjudicating a claim for compensation arising out of death due to negligence by the State. Drawing upon the decisions of the Supreme Court in *Nilabati*

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<sup>2</sup>2024 SCC OnLine Del 6250



*Behera v. State of Orissa*,<sup>3</sup> and *D.K. Basu v. State of West Bengal*,<sup>4</sup> this Court held that a public law remedy can be resorted to, and monetary compensation may be awarded, in cases involving a proven violation of Article 21 of the Constitution. The Court reaffirmed that a claim for compensation under public law, founded upon the unconstitutional deprivation of the right to life, is a remedy distinct from, and in addition to, any private law action in tort. The defence of sovereign immunity, being wholly alien to the constitutional guarantee of fundamental rights, cannot be invoked by the State in such proceedings.

21. In *Shagufta Ali*, this Court formulated the governing principles for the adjudication of such claims. It was held that ordinarily, a High Court exercising jurisdiction under Article 226 of the Constitution of India should refrain from awarding compensation, a remedy primarily within the civil law domain, when the case involves genuinely disputed questions of fact. However, where the State's tortious liability is not disputed, or where the facts speak so plainly and unequivocally that no reasonable inference other than negligence can be drawn, the maxim *res ipsa loquitur* may be applied to overcome the formal evidentiary burden. In such cases, the absence of concrete proof does not preclude the claimant from recovering compensation, provided that the known facts permit the Court to draw an unequivocal inference that the harm was caused by the negligence of the State or its servants. The relevant portions of the said decision are extracted below, for reference:

*“43. Upon consideration of the aforementioned judicial precedents, it is evident that the High Court, ordinarily while exercising its*

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<sup>3</sup>(1993) 2 SCC 746

<sup>4</sup>(1997) 1 SCC 416



*jurisdiction under Article 226 of the Constitution of India, should refrain from awarding compensation, a remedy primarily available within the civil law domain, when the case involves disputed questions of fact. However, if the State's liability for a tortuous act, committed by itself or its servants, is undisputed, the maxim *re ipsa loquitur* may be applied to overcome any factual controversy. The absence of concrete proof does not preclude the claimant from recovering compensation, provided a reasonable inference can be drawn from the known facts that the harm was caused by the negligence of the State or its servants. In such circumstances, the facts must enable the Court to draw an unequivocal inference and must speak for themselves.*

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46. *In light of the aforesaid, this Court has no hesitation in concluding that where the negligence and breach of duty by the State are manifestly evident, the maxim *res ipsa loquitur* shall apply. When the State is under a statutory duty of care and fails to fulfil such duty, the presumption of liability without proof will also arise. In such cases, it is practically not possible for the aggrieved persons to gather positive evidence of negligence and therefore, the doctrine of *res ipsa loquitur* comes to the rescue and helps in overcoming the formal evidentiary burden. However, the same is subject to the proof of foundational facts and manifest negligence."*

22. The Court in ***Shagufta Ali*** drew upon the exposition of the maxim *res ipsa loquitur* by the Supreme Court in ***Shyam Sunder v. State of Rajasthan***,<sup>5</sup> wherein it was held that the maxim is resorted to when an accident is shown to have occurred and the cause thereof is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the claimant from recovering compensation, provided that a proper inference can be drawn from the known circumstances that the harm was caused by the negligence of the defendant. The fact of the accident may, in itself, constitute evidence of negligence, and it is at that point that the maxim *res ipsa loquitur* squarely applies. The Court in ***Shagufta Ali*** further held that when the State is under a statutory

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<sup>5</sup>(1974) 1 SCC 690



duty of care and fails to fulfil that duty, the presumption of liability without positive proof also arises, since in such situations, it is practically not possible for the aggrieved persons to gather direct evidence of negligence, and the doctrine of *res ipsa loquitur*, therefore, comes to their rescue by overcoming the formal evidentiary burden. However, this relief remains subject to the proof of foundational facts and manifest negligence.

23. The principles so enunciated in *Shagufta Ali* have since been consistently followed by this Court. In *Munna v. MCD*,<sup>6</sup> this Court reiterated that where the negligence and breach of duty by the State are writ large, and the duty of care is found to be specifically and squarely that of the public authorities in question, the maxim *res ipsa loquitur* shall apply.

24. In *Pravesh Kumar and Anr. v. Delhi Jal Board*,<sup>7</sup> this Court, while adjudicating a claim for compensation arising out of the tragic death of a nine-year-old child who fell into a water-filled pit on land owned by the DJB, applied the principles enunciated in *Shagufta Ali* with equal force. In *Pravesh Kumar*, this Court held that in cases where the factum surrounding the incident leading to the death of the deceased is undisputed, but the issue of negligence and liability may be contested, the petitioner would still be entitled to seek compensation by resorting to the public law remedy. The facts established by the pleadings provide the basis for a pecuniary claim regardless of any *inter se* disputes as to liability for the alleged negligence, and in such cases, the facts as established by the record speak for themselves and attract the maxim *res ipsa loquitur*. The said decision has been affirmed by the Division Bench of this Court in *Delhi Jal Board v. Sh. Parvsh*

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<sup>6</sup>2024: DHC: 7060

<sup>7</sup>2024 SCC OnLine Del 8158



*Kumar and Ors.*<sup>8</sup> Further, this decision has also not been interfered by the Supreme Court in the Special Leave Petition titled *Delhi Jal Board v. Parvesh Kumar and Ors.*<sup>9</sup>

25. Thus, the position that emerges from the aforementioned discussion, therefore, is unambiguous. Wherever the foundational facts surrounding the incident are not disputed, and wherever those facts, read together, admit of only one reasonable inference, namely, that the State or its instrumentality failed to discharge its duty of care resulting in the deprivation of the life of a citizen, the writ Court is not only empowered to grant compensation in the exercise of its power as a Constitutional Court. It is equally settled that any *inter se* dispute between the respondents or any other entity as to which of them bears primary liability shall not operate as a bar to the grant of relief to the petitioner. The Court may fasten liability upon one respondent, leaving it open to that respondent to recover from others in appropriate separate proceedings.

26. The scales of equity would tilt against relegation of the petitioners to proceedings before the Civil Court, if the foundational facts to establish that the deceased passed away due to negligence attributable to DJB are undisputed. The petitioners, comprising of an old lady, a widow, and three minor children do not have any source of income since the demise of the sole breadwinner in their family.

**C. Whether negligence is attributable to DJB?**

27. Approaching the facts of the present case on the anvil of the aforesaid legal principle, it is seen that the following facts are not disputed and are

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<sup>8</sup> Order dated 23.04.2025 in L.P.A. 266/2025

<sup>9</sup> Order dated 11.08.2025 in S.L.P. (C) 31574/2025



matters of record. DJB had undertaken pipeline repair work in the area of Main Hiran Kudna Road, Dhichaun Kalan, Delhi, and for that purpose had caused a deep excavation to be dug in front of its own office premises, on a public road regularly used by vehicular traffic. The deceased, while returning home from work on his motorcycle during the late hours of the night of 17/18 April 2019, fell into the said excavation. The deceased lay unattended in the ditch throughout the night, until a PCR call was received at approximately 06:07 AM on 18.04.2019. The deceased was then extracted from the site and shifted to the hospital, but succumbed to his injuries on 27.04.2019. The FIR registered by the police station concerned corroborates these facts and records that when officers visited the site, the deceased's motorcycle lay inside the ditch. The relevant extract of the FIR is extracted as under:-

*“District Dwarka (Delhi) PS Baba Hari Das Nagar GD No. 004A Dt. 18/04/19 Time 6:07:28 entry Made For Rank/Name PIS No. of Police Officer: Assistant Sub- Inspector/Jai Bhagwan/28820199 GD type (s): PCR Call GD Subject Information received PCR Call GD Brief: Ref. CPCRR DD No. 18 April 191190072, Incident, Address: DICHAON KALAN NAJAFGARH NR BY PANI KA UZIYAR, Incident Description: YHA PAR EK PERSON RAT SE NALE MEPDA H, Mobile No. 9210124264, From Sonia Devi, 10013/PCR, upon received the information via PCR Call the matter was marked to ASI Krishan Saab who would investigate the matter accordingly. Baklam ASI/DO Signature Assistant Sub-Inspector/Jai Bhagwan/28820199. Sir Duty Officer Saab P.S. Baba Haridas Nagar, it is humbly requested that it was informed to the ASI on 18.04.19 vide DD No. 4A ASI with duty officer Ct. Hansraj No. 618/DW reached the site at Main Hiran Kudna Road, Dichau Village Delhi where in front of Delhi Jal Board Plant, there was a hole dug at the main road by Delhi Jal Board for repairing the pipe and the hollow was covered by six plastic Barriacade of red colour. At that moment there was a black colour Platina bike bearing No. HR 26 CV 2326. As there was no eye- witness present at the moment after getting the DD NO. 6A, the respected ASI, Ct. Hansraj No. 618/DW had to leave the place of accident to reach RTRM Hospital. There after getting the MLC No. 1639/19 Dinesh Kumar RO*



*B-504 Agar Nagar Prem Nagar. On MLC DR to AHO RTA of road side with the wounds still pending and patient was declared unfit for statement and even in the hospital there was no eye-witness present. The patient was referred to DDU Hospital for further treatment and after that ASI returned to the place of accident to take custody of M/cycle no. HR 26 CV 2326. Dinesh Kumar S/O Kishan Lal was undergoing treatment in the DDU hospital and the patient is not yet declared fit for statement. U/S 279/337 IPC was registered. The register FIR is ready to be investigated. The FIR is now given to registered ASI officer for further investigation. Dated 18/4/19 time 00.00 to 06.00 hrs: Main Hiran Kudna Road, Dichau Village Delhi: 20/4/19 at 11:45 AM SD English ASI Krishan Kumar after investigation the case has been registered U/S 279/337 IPC. CCTNS OPP through computer with computerized copy through SHO to ASI Krishan Kumar who will look into this matter. The FIR alongwith copy thereof sent to the senior official for their kind information.”*

28. DJB does not dispute the factum of the accident or the death of the deceased. It, however, seeks to deflect its liability on the ground that the excavation work was carried out not by DJB itself but by a third-party contractor engaged by it, and that under the terms of the contract, the contractor was obligated to indemnify DJB against all claims arising out of the work. It is further contended that barricades had been placed around the ditch, and that the accident may have been caused in part by the deceased's own conduct in failing to stop his motorcycle when faced with the headlights of an oncoming truck.

29. So far as the question of vicarious liability is concerned, this Court in *Chitra Chary and Ors. v. DDA and Ors.*,<sup>10</sup> has held that any activity undertaken under the authority of the State must be reckoned as the act of the State itself, and the State must be held vicariously liable for it. This is in line with the decision of the Supreme Court in *Achutrao Haribhau Khodwa*

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<sup>10</sup> (2004: DHC: 22496)



*and Ors. v. State of Maharashtra and Ors.*,<sup>11</sup> wherein, it was observed that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such, as any other employer.

30. In *Lakhan Singh and Anr. v. Delhi Development Authority and Ors.*,<sup>12</sup> this Court, in an analogous situation where the DDA sought to deflect liability onto a private contractor for leaving an open manhole, emphatically rejected such a defence, holding that a statutory body's duty of care cannot be so easily transferred to a contractual arrangement with a private party.

31. The contention of contributory negligence on the part of the deceased is without merit. The deceased was a commuter on a public road, navigating conditions of the night, when momentarily blinded by approaching headlights and unable to perceive an open excavation. The obligation to ensure that a hazardous excavation on a public road was adequately safeguarded, not merely by the placement of temporary barricades but by continuous supervision, adequate illumination, and prompt emergency response, rested squarely upon DJB.

32. Moreover, the fact that the deceased lay unattended in the ditch from the night until well past dawn the following morning, despite the ditch being situated directly in front of an office of DJB, by itself constitutes compelling evidence of a systemic and egregious failure of the duty of care owed to the public by a statutory authority like DJB. As per the data furnished by the Ministry of Road Transport and Highways in its report titled 'Road Accidents in India' 2023, 8,246 people were injured in the year 2023,

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<sup>11</sup> (1996) 2 SCC 634

<sup>12</sup>(2024: DHC: 1088)



whereas further 3,904 persons were killed in the same year, as a result of road accidents due to ongoing road works/construction activity.<sup>13</sup> These figures underscore the grave danger posed by unattended excavation sites, unbarricaded ditches, and incomplete repair works on public roads. Such incidents are not unforeseeable occurrences, but rather a consequence of administrative negligence and failure to implement basic safety measures mandated for public infrastructure works. The absence of adequate barricading, warning signs, illumination, supervision, and emergency response mechanisms reflects a disregard for public safety and human life.

33. This is exactly what has happened in the present case. DJB ought to have been well aware that such accidents can occur if a pit is dug on a road that is used by the public. Therefore, in such cases, the duty of the State and statutory bodies does not exhaust itself with the mere installation of barricades, it extends equally to vigilant supervision over hazardous sites and ensuring timely emergency response.

34. Consequently, the facts and material on record speak for themselves and indicate a lack of duty of care and negligence on the part of DJB. The maxim of *res ipsa loquitur* is squarely attracted.

35. Once the facts established by the record raise a presumption of negligence, the burden of demonstrating that adequate care and precautions were taken shifts upon DJB. As indicated in the preceding paragraphs, the burden has not been discharged. Accordingly, this Court finds that the death of the deceased was occasioned by negligence attributable to DJB and the petitioners are therefore entitled to compensation under Article 226 of the Constitution of India.

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<sup>13</sup> Table 3.5, 'Road Accidents in India' 2023, Ministry of Road Transport and Highways, Pg 44.



***D. Whether the third-party contractor is a necessary party in the present case?***

36. In proceedings instituted by a third-party against the indemnity holder, the indemnifier is not a necessary party. The indemnity holder may recover any dues it would be entitled to, in separate proceedings. Reference may be made to the decision of a coordinate Bench of this Court in ***Pravenn Kumar Bhatia v. Dr. (Mrs.) M. Ghosh and Ors.***,<sup>14</sup> wherein, in a suit for damages on account of medical negligence, an application for impleadment under Order I Rule 10 of the Code of Civil Procedure, 1908 was filed by the insurance company on the ground that since it had indemnified the defendant-doctors, the decision in the suit would affect its rights and therefore, it was a necessary party therein. However, the Court rejected the said argument as follows:

*“2. Facts, in brief, leading to the filing of the present application so that Praveen Kumar Bhatia has filed the present suit against defendants 1 and 2 who are the doctors and Defendant No. 3 in the Nursing Home owned by Defendant No. 2 on the ground that due to their gross negligence in treating the plaintiff's wife, they have caused death of plaintiff's wife and thus plaintiff claims Rs. 20 lacs as damages from the defendants. The plea taken by the applicant insurance company in the application is that that defendant No. 1 being a qualified medical practitioner had obtained an insurance cover policy for the relevant period covering the risk as “Doctors Indemnity Insurance :IMA Medical Protection Scheme” to the tune of Rs. 1,00,000, so it is mentioned in the application that applicant's interests are likely to be effected by any decision to be given in the suit and thus applicant should be allowed to be joined as defendant for defending the suit.....*

*5. Counsel for the applicant has vehemently argued that any decision given in the suit against the defendants is likely to effect the rights of the applicant inasmuch as applicant shall be liable to reimburse the Defendant No. 1 in case any damages are imposed on Defendant No. 1 on account of any finding given showing the negligence of the defendant*

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<sup>14</sup>1989 SCC OnLine Del 8



*in treating the plaintiff's wife. I am afraid that the applicant cannot be joined as a party in the suit because the presence of the applicant is neither necessary nor proper for effectively deciding the issues in the suit..... It was held there is no jurisdiction to add a party in any other case merely because that would save a third person the expense and botheration of a separate suit for seeking adjudication of a collateral matter which was not directly and substantively in issue in the suit. It was further observed that plaintiff is the dominus litis and he is master of the suit and he cannot be compelled to fight against a person whom he does not wish to fight and against whom he does not claim any relief. It was held that only in exceptional cases where the Court finds that the addition of a new defendant is absolutely necessary to enable it to adjudicate effectively and completely the matter in controversy between the parties, will it add a person as a defendant without the consent of the plaintiff..*

37. In the facts of the case at hand, the contractor here was engaged by, and was working under the authority of DJB. DJB cannot escape the consequences of negligence in the execution of work undertaken within its own authority, merely by pointing to a contract of indemnity with its contractor. The petitioners are not privy to that contract, and their right to claim compensation from DJB cannot be made contingent upon its terms. Needless to state, DJB is at liberty to recover any amounts paid by it from the contractor in separate proceedings, if it is so entitled under any contract.

### **COMPENSATION.**

38. This Court, in the case of *Kamla Devi v. GNCTD and Ors.*,<sup>15</sup> laid down the principle for calculation of monetary compensation in cases of Constitutional torts, wherein, it has held as follows:

*“5. The compensation to be awarded by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:— (a) ‘standard compensation’ or the so called ‘conventional amount’ (or sum) for non-pecuniary losses such as loss of*

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<sup>15</sup>2004 SCC OnLine Del 721



*consortium, loss of parent, pain and suffering and loss of amenities; and (b) Compensation for pecuniary loss of dependency.*

*6. The 'standard compensation' or the 'conventional amount has to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee. Keeping this in mind, in case of death, the standard compensation in 1996 is worked out at Rs. 97,700/-. This needs to be updated for subsequent years on the basis of the Consumer Price Index for Industrial Workers (CPIIW) brought out by the Labour Bureau, Government of India.*

*7. Compensation for pecuniary loss of dependency is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MVAct, 1988 cannot be relied upon, however, the appropriate multiplier can be taken therefrom. The multiplicand is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency.*

*8. The total amount paid under 6 and 7 above is to be awarded by the Court along with simple interest thereon calculated on the basis of the inflation rate based on the Consumer Prices as disclosed by the Government of India for the period commencing from the date of death of the deceased till the date of payment by the State”*

39. The said formula has since been adopted in subsequent decisions, including *Shagufta Ali, Munna, Pravesh Kumar, and Lakhani Singh*. In terms of the said formula, compensation in the instant case is to comprise of two parts, a standard compensation and compensation for pecuniary loss of dependency.

#### **A. Standard Compensation**

40. In *Kamla Devi*, the Court awarded standard compensation as laid down by the Supreme Court in *Lata Wadhwa v. State of Bihar*,<sup>16</sup> after revising the same taking into consideration the inflation factor on the basis of

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<sup>16</sup> (2001) 8 SCC 197



the Consumer Price Index for Industrial Workers [**CPI (IW)**] released by the Labour Bureau of the Government of India.

41. Similarly, in the present case as well, the standard compensation is being calculated after revising the standard amount of Rs. 50,000/- (Rupees Fifty Thousand only) awarded in *Lata Wadhwa* as per the method adopted in *Kamla Devi*.

42. Mr Dinesh Kumar passed away in the year 2019. At that time, the prevalent All-India CPI (IW) was 317 and the base year was 2001. In *Lata Wadhwa*, the deceased had passed away in the year 1989 and the CPI (IW) for that year was 171. At that time, the base year for CPI (IW) was 1982. The linking factor for the two base years is 4.63. Therefore, the CPI (IW) for the year 2019 taking the base year to be 1982 would be 1467.71 (317 multiplied by 4.63).

43. The formula for adjusting the inflation factor in the compensation amount awarded for the year 1989 would be compensation as in 1989 multiplied by CPI (IW) for 2019 and divided by CPI (IW) for 1989. Accordingly, the standard compensation in the instant case would be Rs. 4,29,154.97/- (Rupees Four Lakh Twenty Nine Thousand One Hundred and Fifty-Four and Ninety-Seven Paise only). This amount can be rounded off to Rs. 4,29,155/- (Rupees Four Lakh Twenty Nine Thousand One Hundred and Fifty-Five only).

#### ***B. Pecuniary Compensation***

44. As per the formula adopted in *Kamla Devi*, pecuniary compensation is to be computed taking into account the last drawn salary of the deceased and deducting the expenses that the deceased would have incurred upon himself,



had he been alive. After determining the annual loss of income for the dependants, the same ought to be multiplied by a suitable multiplier value, which, the Court in *Kamla Devi*, adopted from the Second Schedule in the Motor Vehicles Act, 1988 [MV Act]. Although the said Schedule has been omitted from the MV Act *vide* the Motor Vehicles (Amendment) Act, 2019, in view of the fact that the omission came into force on 01.04.2022,<sup>17</sup> and in the absence of a suitable guide for computation of the pecuniary compensation, the multiplier value specified therein is borrowed.

45. Late Mr. Dinesh Kumar was thirty-seven years old at the time of his demise, and was earning a salary of Rs. 16,770/- (Rupees Sixteen Thousand Seven Hundred and Seventy only) per month. His family comprised of six members, including himself, i.e., three adults and three minors.

46. In order to calculate the personal expenditure that the deceased would have incurred had he been alive, the family is divided into units; each adult is assigned two units, and each minor is assigned a unit each. In total, the family would have nine units, and each unit would have a value of 1863.33 (16,770 divided by 9). The deceased would have incurred a monthly personal expenditure equivalent to the value of his two units, i.e., 3726.66. Therefore, his monthly income after deducting his personal expenditure would be Rs. 13,043.34/- (Rupees Thirteen Thousand Forty-Three and Thirty-Four Paise only). The annual loss of income for the petitioners would, therefore, be Rs. 1,56,520.08/- (Rupees One Lakh Fifty Six Thousand Five Hundred and Twenty and Eight Paise only).

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<sup>17</sup> Notification dated 25.02.2022 issued by the Ministry of Road Transport and Highways, Government of India.



47. Under the Second Schedule of the MV Act as it existed prior to the amendment, the applicable multiplier in case, the deceased person was aged thirty-seven years at the time of his demise, would be 16. Therefore, multiplying the annual loss of income for the petitioners by 16, we get the amount of pecuniary compensation, i.e., Rs. 25,04,321.28/- (Rupees Twenty Five Lakh Four Thousand Three Hundred and Twenty-One and Twenty-Eight Paise only). The said figure can be rounded off to Rs. 25,04,321/- (Rupees Twenty Five Lakh Four Thousand Three Hundred and Twenty-One only).

48. Therefore, the petitioners are entitled to standard compensation of Rs. 4,29,155/- (Rupees Four Lakh Twenty Nine Thousand One Hundred and Fifty-Five only) and pecuniary compensation of Rs. 25,04,321/- (Rupees Twenty Five Lakh Four Thousand Three Hundred and Twenty-One only).

49. In view thereof, the petitioners are entitled to a rounded off lump sum amount of Rs. 30,00,000/- (Rupees Thirty Lakh only). However, considering that they have received an amount of Rs. 50,000/- (Rupees Fifty Thousand only) from DJB, the respondents are directed to pay a lump sum amount of Rs. 29,50,000/- (Rupees Twenty-Nine Lakh Fifty Thousand only), along with simple interest at the rate of six per cent per annum from the date of the accident till the date of realisation, as compensation to the petitioners for the death of late Mr. Dinesh Kumar, within three months from the passing of this judgment. Any failure to comply with the same shall result in the petitioners' being entitled to simple interest at the rate of ten per cent per annum, till the payment is made.



### **PARTING OBSERVATIONS**

50. Although policy making is a function of the Executive and it is not for the Court to impinge on the same, the Court cannot remain oblivious blind to the difficulties faced by people such as the petitioners. The loss of the sole breadwinner of a family, particularly where the dependents do not possess sufficient financial means or social support to sustain themselves, places such families in an extremely vulnerable and precarious condition, where even their day-to-day survival becomes uncertain. In such circumstances, the dependants are often left to navigate prolonged financial distress, educational disruption, emotional trauma, and social insecurity, all while simultaneously pursuing legal remedies for compensation. They ought not to be compelled to undertake prolonged and expensive litigation merely to secure basic financial relief arising out of incidents attributable to the negligence of public authorities.

51. The present petitioners have been awaiting financial compensation since the year 2021 and have been enduring hardship ever since the incident occurred in 2019. They have thus spent nearly five years in a state of uncertainty and deprivation. Such delays substantially dilute the very purpose of compensatory relief, which is intended to provide timely succour and rehabilitative support to affected families.

52. A structured and effective policy framework for expeditious grant of compensation in cases such as these, would go a long way in ensuring that victims and their families receive immediate assistance without being compelled to pursue litigation for appropriate relief. Such a mechanism would not only alleviate hardship faced by affected families but would also enhance accountability among public authorities entrusted with maintaining



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public infrastructure and safety standards. The concerned authorities are, therefore, urged to examine the feasibility of formulating an appropriate policy in this regard, so as to ensure timely, humane, and efficient disbursement of compensation in deserving cases.

53. With these observations, the petition, along with pending applications, stands disposed of.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**MAY 29, 2026**

aks/amg