
**The Consumers' Protection Association and Another Vs Union Territory
of Chandigarh and Others**

C.W.P. No. 16142 of 2011 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 30, 2012

Acts Referred:

Constitution of India, 1950 – Article 226

Citation: (2013) 169 PLR 860 : (2013) 1 RCR(Civil) 595

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Advocate: Y.P. Singla, for the Appellant; Shri Pankaj Gupta, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mahesh Grover, J.

The petitioners who are unfortunately the parents who lost their 7 years old child in a tragic accident of drowning

attribute the cause of death to the negligence of the respondents who left the manhole uncovered in which the minor child of the petitioners namely

Gautam fell resulting in his death. The respondents have denied their negligence and have submitted their reply stating that the manhole was in a

sewer line which is 12 to 20 feet in height and it was not possible for a small boy of 7 years to climb upto that level. Inferentially, they have tried to

make out that the cause of death was not on account of the accident, but possibly on account of some foul play. They have also objected to the

maintainability of the writ petition saying that the cause of death on account of negligence has to be sustained on a finding recorded by the Court of

competent jurisdiction on the basis of evidence.

2. I have considered the matter in detail.

3. In so far as the maintainability of the writ petition is concerned, it is a settled principle of law that in case the negligence is evident, then in such

eventuality, the Constitutional Court is still empowered to look into the issue of grant of compensation for which it may determine its own

parameters.

4. The Hon^{ble} Supreme Court in *Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others*, (3) Recent

Apex Judgments 92 (S.C.) has held that the Constitutional Court while exercising its power under Article 226 of the Constitution of India is

certainly empowered to invoke its jurisdiction to answer the claim of compensation and it is not necessary to force the litigant into the throes of long

litigation before the civil courts and that it can evolve its own methodology to assess compensation.

5. Evaluating the facts, the death and its cause is not disputed and that the deceased fell into the manhole is also not disputed. What the

respondents have tried to say is that the deceased being a small child of 7 years, could not have climbed upto a height of 12 to 20 feet of his own.

Further, the manhole was covered which has been established during the course of enquiry, the relevant findings of which are extracted here

below:-

(i) The second stretch of 518" length RCC Box channel across the railway track is at average height of 12" (varying from 10" to 18") above the

choe bed ;

(ii) There is no easy access to top of RCC Box channel except from the columns or climbing down from the railway track ;

(iii) There is no playground or residential building nearby this RCC Box channel which crosses the undulating choe bed partially with bushes.

(iv) The Sarpanch of the Raipur Kalan, Shri Gurdeep Singh in his statement stated that the height of the RCC Box Channel is 12" to 20" where

hardly any child can climb. There is no way to reach the channel. There is no proper place for children to play and the choe flows below the RCC

Box Channel.

6. The respondents have also stated in their reply that after the sad demise of the son of the petitioners, the Municipal Corporation of Union

Territory, Chandigarh has taken further preventive steps and covered the manhole with concrete so that there is no possibility of the cover being

stolen. An amount of Rs. 50,000/- has been given by the respondents of their own by way of ex-gratia to the petitioners.

7. The photographs which are on record along with the rejoinder filed by the petitioners, reveal that it is not a case where a 7 years old child could

not have climbed on to the wall where the manhole was located. There are mounds of earth which are leading almost upto the height of the wall

where these manholes were located. Also visible in the photographs Annexure P-4 is a date tree. This is relevant because the petitions state that

the deceased had gone to pluck dates. The manholes are also visible in the photograph Annexure P-4. The respondents have tried to brush aside

their liability by stating that there were fiber steel covers on the manholes which they are presuming to be existing as nobody would steal them.

Subsequent to this incident, they have taken care to replace them with concrete covers.

8. It was the duty of the respondents to investigate the matter and establish as to how the minor son of the petitioners was found dead in the

manhole. The post-mortem report does not suggest any other reason except for drowning.

9. It is, therefore, evident that the matter has not been fairly enquired into and the respondents are trying to wish away their negligence. The

physical inspection conducted by the respondents, the extract of which has been reproduced in the foregoing paragraphs, only shows that a very

cursory approach has been adopted and an explanation simpliciter as to the given cause of death of the minor child. The facts therefore, speak for

themselves that the manhole was uncovered and the minor son of the petitioners accidentally fell into the same drowning therein and dying on

account thereof.

10. Consequently, this Court is of the opinion that the petition deserves to be allowed.

11. This Court in C.W.P. No. 11838 of 2011 Smt. Sukkar and another v. State of Haryana and others decided on 4.7.2012, considering the

death of a minor child by electrocution, had assessed an amount of Rs. 6,40,000/- as compensation. Keeping in view the aforesaid, the instant

petition is allowed and the petitioners are held entitled to the grant of Rs. 6,40,000/- as compensation. An amount of Rs. 50,000/- was paid to the

petitioners by way of interim compensation, which shall be deducted from the amount determined above. The said compensation be released to the

petitioners within a period of two months from the date of receipt of a copy of this order.