

Yogita Vs Government of NCT of Delhi and Another

Court: Delhi High Court

Date of Decision: Jan. 31, 2011

Citation: (2013) ACJ 335 : (2011) 2 AD 470 : (2011) 178 DLT 554

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Rakesh Prabhakar and Amrita, for the Appellant; Zubeda Begum, A.S.C. for R-1/GNCTD, P.V. Kapur Jeevesh Nagnath and Ikasha Bhalla for R-2/Liberty Cinema, for the Respondent

Final Decision: Allowed

Judgement

S. Muralidhar, J.

The Petitioner is the widow of deceased Shri Sita Ram who died in a terrorist attack on 22nd May 2005 at 8.20 pm in

the Liberty Cinema Hall owned by Respondent No. 2. The Government of National Capital Territory of Delhi ("GNCTD"), Respondent No. 1,

gave the Petitioner an ex gratia amount of Rs. 1 lakh. The deceased left behind the Petitioner and two minor children aged five and three years. In

the circumstances, the present petition has been filed for directions to Respondent Nos. 1 & 2 to jointly and severally pay damages in the sum of

Rs. 9,60,000/- calculated inter alia on the basis that the Petitioner's late husband who was working as a plumber and was aged 30 years, earning

an amount of Rs. 4,000/- per month.

2. A reply on behalf of Respondent No. 1 has been filed by the Deputy Commissioner of Police (DCP) (Special Cell), Lodhi Colony, Delhi. It is

stated that on 22nd May 2005, two bomb blasts took place at the Liberty and Satyam Cinema Halls in New Delhi. In the blast, which took place

at Liberty Cinema Hall in Karol Bagh, New Delhi at about 8.20 pm, 55 persons were injured and one died. FIR No. 206/2005 under Sections

302/307 IPC and Sections 3/4/5 of the Explosive Substances Act, 1908 was registered at Police Station Desh Bandhu Gupta Road, New Delhi.

After the case was transferred to the Special Cell, Delhi Police it was revealed during investigations that the offences were committed by a terrorist

group and Sections 121/121A/122/123/120B IPC and Sections 16/17/18/19/20/23 of the Unlawful Activities (Prevention) Act, 1967 were also

added in the FIR.

3. The affidavit of Respondent No. 1 further states that in the investigations into the bomb blasts which took place in the Liberty Cinema as well as

Satyam Cinema revealed that the accused were the members of the Babbar Khalsa International ("BKI"). The accused appeared to have taken

training in Pakistan under the supervision of BKI chief Wadawa Singh and a large quantity of explosive armed material was recovered at the

instance of the accused. 5.7 Kgs. of RDX, 23 detonators, 1 timer, Rs. 2.94 lakhs cash, 2 Kgs. Gold, 1 rifle .303 bore, 90 live rounds of .303

bore rifle, 3 empty magazine of .303 bore rifle, 5 magazine of 30 bore pistol, one Tata Sierra vehicle and one Santro Car used for transportation of

the explosives to the Cinema Halls besides other articles were recovered. After setting out the details of the investigations carried out, the affidavit

states that there was no failure on the part of the Police to take measures to avoid such incidents and for ensuring safety of the people. The incident

is termed as a "terrorist attack". It is claimed that the incident in which the Petitioner's husband died was not on account of any negligence on the

part of the Police or the State authorities. It is claimed that there is no breach of duty and therefore, no liability under the law of torts is attracted.

4. Respondent No. 2 has filed a counter affidavit in which while not denying that the unfortunate death of the Petitioner's husband took place on

account of the bomb blast on 22nd May 2005, it is stated that Respondent No. 2 itself is a victim of the said terrorist attack. It is stated that the

following security measures were taken by Respondent No. 2 on the advice of the Delhi Police for the security of those visiting the cinema hall:

(i) Customers were not allowed to carry bags, packages, food items, boxes etc. into the movie hall;

(ii) One doorframe metal detector and a hand metal detector are used at the main entrance (there is no other way any person can enter) and all

persons entering the picture hall have to pass through the metal detectors;

(iii) After the patrons pass through the metal detectors, they are physically frisked and checked by security personnel before they can enter the

auditorium;

(iv) The bathrooms, dustbins, the auditorium and the space under each seat is checked before each show;

(v) Parking lot attendants check all the cars including the undercarriage, by using mirrors; (vi) A slide is shown on the screen requesting the patrons

to immediately inform the management, if they see any unidentified object;

5. It is contended that Respondent No. 2 on its part had taken all reasonable measures to ensure the safety of persons visiting the cinema hall. It is

denied that there was any negligence or breach of duty of reasonable care on the part of Respondent No. 2. It is denied that Respondent No. 2 is

liable in any manner to compensate the Petitioner or the two children for the death of her husband.

6. Mr. Rakesh Prabhakar, learned Counsel for the Petitioner, relied on the judgment of the Court in Smt. Kamla Devi Vs. Government of NCT of

Delhi and Another, and contended that it was a responsibility of the State to ensure that dangerous explosive substances like RDX were not

accessible to criminals and terrorists. Obviously, the State had been unable to prevent the occurrence of the explosion. Relying on the decision of

the Supreme Court in D.K. Basu Vs. State of West Bengal, , it was submitted that it was the responsibility of the State to secure the life and liberty

of its citizens and the liability of the losses arising out of a bomb blast must essentially be borne by the State. Reliance was also placed on the

decisions of the Supreme Court in Tamil Nadu Electricity Board v. Sumathi (2004) 4 SCC 543 and Smt. Nilabati Behera alieas Lalita Behera Vs.

State of Orissa and others, . It was further submitted that the compensation awarded by the State Government ex gratia was hardly sufficient for

the Petitioner to manage a family of two minor children. Adopting the calculation of compensation as arrived at in Kamla Devi"s case, the

Petitioner recalculated the amount claimed as Rs. 7,84,083.18/- (including simple interest @ 7%) towards compensation for herself and her two

minor children.

7. Mr. P. V. Kapur, learned Senior counsel appearing for Respondent No. 2 submitted that Respondent No. 2 was not undertaking any inherently

dangerous activity and, therefore, the question of strict liability would not arise. Referring to the judgment in Perry v. Kendricks Transport Ltd.

(1956) 1 All E R 154 , it is pointed out that where the Defendant can show that the act in question was brought about by someone that Defendant

had no control, and Defendant would not be negligent. He referred to certain observations in Mt. Sukhraj Bhuj Vs. Calcutta State Transport

Corporation, , to the effect that ""people must guard against reasonable probabilities and not fantastic possibilities"". He referred to the decisions in

M.C. Mehta and another Vs. Union of India and others, , Rajkot Municipal Corporation Vs. Manjulben Jayantilal Nakum and Others, and

Shyama Devi and Others Vs. National Capital Territory of Delhi and Others, . Referring to certain passages in Clerk & Lindsell on Torts [VII Ed.

1995 Sweet & Maxwell, London, p. 332], Mr. Kapur submitted that in fixing liability as well as compensation there has to be an objective

reasonable criteria arrived at by balancing costs and benefits and community values.

8. The above submissions have been considered. That a bomb blast took place at Liberty Cinema Hall in which the Petitioner"s husband died is

not in dispute. The question therefore is limited to whether, for the death of the Petitioner"s husband, the Respondents are jointly and severally

liable to compensate his family and to what extent. The investigations by the Delhi Police so far have revealed the involvement of BKI, a banned

organization in carrying out the bomb blast both at Liberty Cinema as well as Satyam Cinema on the same date. They used RDX and other devices

to detonate the explosion. Clearly, a terrorist attack of this nature could not have been prevented by the owner of the cinema hall, i.e., Respondent

No. 2 who is stated to have taken reasonable precautions as detailed in the affidavit filed by him.

9. The law concerning the liability of the State to account for the safety and security of its citizens and to compensate for the losses suffered as a

result of acts of omissions and commissions of the State or its agencies is well established. In D.K. Basu v. State of West Bengal, the Supreme

Court observed that the Court was required to order compensatory relief ""...not by way of damages as in the civil action but by way of

compensation in the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to

life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience."" It was held that the

award of compensation for established infringement of the indefeasible rights guaranteed in Article 21 of the Constitution ""is a remedy available in

the public law since the purpose of public law is not only to civilize public power but also to assure citizens that they live in a legal system wherein

their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 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 penalizing 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."" The decision in D.K. Basu v. State of West Bengal, has been reiterated and followed in

M.S. Grewal and Another Vs. Deep Chand Sood and Others, .

10. In Shyama Devi v. National Capital Territory of Delhi, a Division Bench of this Court was dealing with a case where a Head Constable had

been killed in a rocket explosion. The facts were that the rocket had been detected lying near Post No. 6 on railway land. It was seized by a Sub-

Inspector of Police Station Naraina in the presence of two Sub-Inspectors of the Bomb Disposal Squad. Subsequently, a Sub-Inspector of the

Bomb Disposal Squad dismantled the rocket into five pieces after defusing it. The five pieces were placed in the plastic bag and kept as case

property in FIR No. 19 of 1996 registered at Police Station Naraina. The case property was kept with the Head Constable Om Prakash. On 15th

May 1997, when Om Prakash was taking out the case properties for being taken to the court for a hearing fixed on that date, an explosion took

place as a result of which Om Prakash and another constable sustained injuries. On 24th May 1997, Om Prakash succumbed to the injuries.

11. The Division Bench held that the heavy duty of care lay upon the State since the explosive device was kept at the Malkhana. As the device

was not defused, the duty of care was clearly breached by the State and its concerned officials. In para 5, the Division Bench held as under:

In such like cases the Courts expect strict and high standard of care from them. When there is a failure to perform duty which results in physical

injury, deprivation of life or loss of property, Article 21 of the Constitution is attracted and the aggrieved party is entitled to invoke Article 226 to

claim monetary or pecuniary compensation as such a remedy is available in public law based on strict liability for breach of fundamental right.

12. After referring to the decided cases of the Supreme Court, the Division Bench awarded a compensation of Rs. 3,50,000/- to the wife and the

two minor children of the deceased Om Prakash.

13. In Kamla Devi's case, the facts were that the deceased was on a public road in the Paharganj area in the vicinity of Arjun Guest House when a

massive explosion brought the building crashing down. It resulted in the death of deceased Uday Singh who was an electrician dealing in the sale

and repair of electrical goods in village Wazirpur in district Gurgaon, Haryana. He left behind his wife Kamla Devi and an infant son. 16 others

were also killed in the said bomb blast in which RDX was used. Investigations revealed that RDX was brought to the building by one Manzoor

Ahmed Khan, an active member of a J & K terrorist organization. He too died in the explosion that took place while he was assembling the

improvised explosive device in the said building. In the said case too, a total ex-gratia amount of Rs. 50,000/- was paid to the family of the victims

by the GNCTD. This Court found that while primarily it is the terrorist who was liable for the death of innocent citizens, next it was the State which

had failed to prevent the terrorist from harming innocent citizens. It was the responsibility of the State to ensure that no person shall be deprived of

his life except according to procedure established by law as provided in Article 21 of the Constitution. It was then observed as under:

The State failed to prevent the terrorist from harming innocent citizens like Uday Singh. Terrorism itself is an indication of the inability of the State

to curb resentment and to quell fissiparous activities. Social malaise in itself is a reflection of the State's inefficiency in dealing with the situation in a

proper manner. Apart from the general inability to tackle the volatile situation, in this case, the State agencies failed in their duty to prevent terrorists

from entering Delhi. It was their responsibility to see that dangerous explosives such as RDX were not available to criminals and terrorists. The

incident occurred as there was a failure on the part of state to prevent it. There was failure of intelligences they did not pick up the movement of

this known and dangerous terrorist. So, it would be extremely difficult even to suggest that the State did not fail in its duty towards the late Uday

Singh and his family.

14. As regards the Respondents, including the Guest House owner, this Court in Kamla Devi was of the opinion that determining their liability

would require a thorough investigation which could not be gone into in a petition under Article 226 of the Constitution. However, this did not mean

that the Petitioner was without any remedy. After referring to the decisions in D. K. Basu, Nilabati Behera and M. S. Grewal, this Court in para 16

held as under:

16. The public law demand, as distinct from the private law tort remedy, is that crime victims be given compensation even in ""no-fault"" situations

by the State. Compensation cannot be limited to cases of police torture or custodial deaths. It must extend to riot victims and victims of terror,

indeed, it must ultimately cover all victims of crime and all criminal injuries. Legislation is lacking in this field. But, that should not deter High Courts,

which are courts of unlimited and plenary jurisdiction, from intervening and redressing grievances according to ""principles of justice, equity and

good conscience"". Not to intervene would amount to shirking the responsibilities which High Courts are expected to shoulder. So, compensation

is payable to the Petitioner by the State for the death of Uday Singh for the breach of the constitutional guarantee of Article 21 that ""no person

shall be deprived of his life except according to procedure established by law"".

15. In the considered view of this Court, facts in the present case are more or less similar to the facts in Kamla Devi's case and therefore, this

Court is inclined to adopt the reasoning in the said judgment and hold that in the instant case as well the State is liable to compensate the Petitioner

and her two minor children for the death of her husband in the bomb blast that took place at the Liberty Cinema Hall.

16. It may be mentioned that the approach of this Court in Ashwani Gupta Vs. Government of India and Others, was no different. There the

Petitioner was participating in the Maharaja Agrasen Jayanti procession in Sadar Bazaar, Delhi. It was stated that the Petitioner lost his right leg

below the knee, both hands except two fingers on the left hand and suffered injuries to both his eyes. There again the plea taken on behalf of the

GNCTD was that though the Government takes all precautions to eliminate such violence in the civic society, the Government cannot be made

liable to compensate for the loss of life and injuries. The Court referred to the observations of the High Court of Punjab and Haryana in Punjab

Istri Sabha and Others Vs. Shri Surjit Singh Barnala, Chief Minister and Another, and observed in para 29 as under:

29. The failure of the State to protect the life and limbs of its citizens itself is sufficient to give rise to the liability. Nothing more needs to be said -

res ipsa loquitor. Such sufferance goes against the very grain of creation of a State or comity of individuals. The individual has surrendered certain

individual rights for such safety. Taxes are paid for the functioning of a government. Safe environment is the very basic function. The citizens gave

to themselves the Constitution of India and adopted a democratic polity. Franklin Roosevelt said:

Democracy, the practice of self government, is a covenant among free man to respect the rights and liberties of their follows.

It is this respect of the rights of the Petitioner which have been violated. He suffered grievous injuries and 90% disability on account of the wrongful

acts of other persons which the State was not able to prevent. It was undoubtedly the duty of the State to have done so.

17. In B.L. Wali and Others Vs. Union of India (UOI) and Others, , where the Petitioners were claiming compensation for the losses suffered on

account of their house in the Kashmir Valley being burnt down on account of violence, this Court again held the State to be liable and awarded

compensation.

18. Consequently, in the present case also this Court has no hesitation in holding that Respondent No. 1 GNCTD is liable to compensate the

Petitioner and her two children for the death of her husband as a result of the bomb blast that took place at the Liberty Cinema Hall. As held in

Kamla Devi, the liability of Respondent No. 2 cannot be possibly determined in these proceedings. At the same time the Petitioner cannot be left

without a remedy.

19. As regards the amount of compensation to be determined, this Court finds that the computation of said amount by the Petitioner in the affidavit

dated 3rd August 2010 is consistent with the approach adopted by this Court in Kamla Devi's case. In paras 6-9 of the said affidavit, it is stated

as under:

6. That according to the judgment delivered by Hon"ble B.D. Ahmed in Smt. Kamla Devi Vs. Government of NCT of Delhi and Another, the

amount of compensation given to the dependents of the person died in terrorist attack should be calculated on two tier system.

(a) Standard compensation or so called conventional amount for non-pecuniary losses such as loss of consortium, loss of parent, pain and loss of

amenities; and

(b) Compensation for pecuniary loss of dependency.

7. That as per the judgment ""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 year on the basis of the consumer price index of industrial workers (CPI-W) brought out by

the Labour Bureau, Government of India."" In the year 1996 the standard amount was Rs. 97,700/- when the CPI-W Index was average of 334

(as per the index given on www.laboureou.nic.in/indtab.htm1 with base year of 1982=100). In the year 2005 the CPI was average 536 as per the

Labour Bureau, Government of India. Now the standard amount which was 97,700 in the year 1996 should be updated according to the CPI-W

index in the year 2005. The calculation for this is as under. When the CPI-W average was 334 in the year 1996 standard compensation was

97,700/-. Now when the CPI-W average is 536 in the year 2005 standard compensation would be $97,700/334 \times 536 = 1,56,788.02/-$ (Rs. One

Lakh Fifty Six Thousand Seven Hundred Eighty Eight and two paise only).

8. That the compensation for the pecuniary loss of dependency is calculated on the basis of loss of earnings for which the multiplier method is to be

employed as per the judgment of Kamla Devi v. Government of NCT of Delhi. The appropriate multiplier is taken from the Second Schedule of

the Motor Vehicles Act, 1988. First thing which we need to calculate is loss in our family. This is calculated as follows as per the judgment. My

family consisted of 4 members before the death of my husband. Two adult persons and two minor. Me and my husband were adult in the family

and we are having two sons who are minors. Now according to the judgment the family should be divided into units:

2 units for each adult person and 2 units for each minor. Sitaram = 2 units, Yogita = 2 units, son = 1 unit, son = 1 unit, Total unit = 6 units.

Annual income of the deceased Shri Sitaram was Rs. 48,000/- (Rupees Forty Eight Thousand). If the income is divided among all family members

as value per unit = $\text{Rs. } 48,000/6 = \text{Rs. } 8,000/-$ (Eight Thousand Only) per unit. The amount Rs. 8,000/- (Eight thousand only) is the annual

expenditure per unit. So, Sitaram's annual expenditure would be $8000 \times 2 \text{ units} = \text{Rs. } 16,000/-$ (Rupees sixteen thousand only) which should be

deducted from the family's annual expenditure as he is died i.e. $48,000 - 16,000 = 32,000/-$ (Rupees Thirty Two Thousand Only). Now the

appropriate multiplier as according to the Second Schedule of the Motor Vehicle Act, 1988 is 18 (which given as according to the age of the

deceased when he died. My husband was 30 years old for which appropriate multiplicand is 18. And so the loss of dependency comes to

$32000 \times 18 = \text{Rs. } 5,76,000/-$ (Rupees five lac seventy six thousand only).

9. That the total compensation would be calculated by adding both the standard compensation and the pecuniary loss of dependency. Now the

total compensation to be given would be $156788.02 + 576000 = \text{Rs. } 732788.02/-$ (Rupees Seven Lac Thirty Two Thousand Seven Hundred

Eighty Eight and Two Paise only).

20. The Respondents have not contested the above statements or the calculation. This Court finds that the calculation of the compensation is more

or less on the lines of the law laid down by this Court in Kamla Devi's case and it merits acceptance. Consequently, this Court directs Respondent

No. 1 GNCTD to pay the Petitioner and her two minor children, a total compensation of Rs. 7,32,788.02 along with simple interest @ 6%, i.e.,

Rs. 7,76,755.30 rounded off to Rs. 7,77,000/- which shall be deposited in this Court by Respondent No. 1 within six weeks. The total

compensation of Rs. 7,77,000/- shall be distributed in equal shares of one-third each in the following manner.

21. The Petitioner shall forthwith thereafter be paid her share, i.e., Rs. 2,59,000/- by the Registry upon producing proper proof of identification.

Equal sums of Rs. 2,59,000/- shall be kept in a fixed deposit with a nationalized bank by the Registry in the name of each of the minor children

(with their mother as the natural guardian) for a period of three years which shall be kept renewed till each child attains majority. The interest

accumulated on the fixed deposits shall, till each child attains majority, be released by the Bank every quarter to the Petitioner. On attaining

majority, the children would be entitled to get the entire amount of the respective fixed deposits released in their favour.

22. The writ petition is allowed in the above terms.