

Shakuntala Vs Govt. of NCT of Delhi and Another

Court: Delhi High Court

Date of Decision: July 1, 2009

Acts Referred: Delhi Municipal Corporation Act, 1957 â€” Section 298, 42

Delhi Police Act, 1978 â€” Section 98

New Delhi Municipal Council Act, 1994 â€” Section 202

Penal Code, 1860 (IPC) â€” Section 188, 289

Citation: (2010) ACJ 1 : (2009) 162 DLT 264 : (2009) ILR Delhi 504 Supp : (2010) 7 RCR(Civil) 2397

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: M.M. Singh and Sunil Singh, for the Appellant; Sumeet Batra, for Zubeda Begum, for Resp. No. 1 and Alok Singh, for Sanjeev Sabharwal, for MCD, for the Respondent

Judgement

S. Ravindra Bhat, J.

In this writ proceeding, under Article 226 of the Constitution of India, the petitioner seeks directions to the Govt. of

N.C.T. of Delhi (first respondent, hereafter ""GNCTD"") and Municipal Corporation of Delhi (second respondent, hereafter ""MCD"") for the

payment of compensation of Rs. 10,00,000/-, alleging that negligence and dereliction of public duty on their part resulted in untimely death of her

husband, Sh. Sita Ram (hereafter ""the deceased"").

2. The brief facts are that the deceased, a fruit vendor, carried on his trade from a roadside ""Redi/"" ""Thela"" (hand-cart). On the fateful day the

deceased was selling fruits when two fighting bulls came by. In the ensuing melee he fell, was entangled between the fighting bulls and was badly

mauled. He was immediately shifted to the GTB Hospital where he remained under treatment till 23.1.05, when he finally succumbed to his injuries

and breathed his last. The postmortem report revealed that the cause of death was

shock due to cranio-cerebral injuries produced by blunt force impact. All injuries are and possible by assault by bull.

3. The event was recorded by the police, in a First Information Report (FIR); in support, the deceased's brother had been examined, and his

statement recorded by the police. An inquest was ordered by the authorities into the cause of death. After considering the materials, the Final

Inquest Report concluded that death of the deceased was due to injuries sustained in course of a bullfight, in which he got inadvertently dragged.

4. The petitioner states that the untimely demise of her husband who was the sole earning member, has left the family, consisting of herself (aged 39

years) and her five minor children (two sons aged 17 and 12 years and three daughters aged between 13 to 16 years) and parents of the deceased

(aged 70 and 68 years), in grave financial distress and to fend for themselves. It is stated that the deceased was earning around Rs. 5,000/- per

month.

5. The petitioner alleges dereliction of duty on part of the respondents and states that the MCD should have taken appropriate steps to ensure that

stray bulls did not roam the public streets. The petitioner urges having represented to the MCD on 16.6.2005 requesting compensation and

thereafter, to having approached several officials of the respondents, who assured her, support. These, it is contended were of no avail, as nothing

was done to redress her grievances. She urges that the deceased, an Indian Citizen, lost his life due to negligence of the respondents, thus his

fundamental right, guaranteed under Article 21, stood violated. The respondents infringed in executing the public duty as a result of which, two

bulls mangled the deceased causing his untimely demise. This death has left the rest of the family to the mercy of fate, and to fend for themselves, as

he was the sole bread-winner of the family and as such compensation should be awarded in their favour and against the respondents. The

deceased was 40 years of old at the time of his death and due to his premature demise not only the daily household needs have suffered a setback

but also his children's future has become an abyss, as there is no means of funding their education.

6. The GNCTD, through Deputy Secretary (Home), in its counter affidavit states that as per order dated 21.9.2006 of the GNCTD compensation

can only be granted in specified cases namely, bomb blasts, communal and other riots, terrorist attacks; Fire and Other Accidents (caused by

individual or natural calamities); Loss of Movable Property (in riots); Damage to residential unit (In riots/fire/natural calamities/ [other than

jhuggies]); Damage to jhuggies (in case of fire/riots etc.). A copy of the order dated 21/9/2006 is annexed.

7. It is further pointed out that in another Writ Petition (No. 14175/2005, titled Vikas Jain v. Govt. of N.C.T. of Delhi) this Court had recorded,

by order dated 30.8.2006, that the task of ensuring Delhi free of cattle menace was with the MCD and the NDMC authorities and for the purpose

an amount of Rs. 4 crores was released by the Delhi Govt. to the MCD for purchase of 12 Hydraulic Trucks and for manpower for these trucks.

It was urged that as substantial amounts were released for the purpose to the agency responsible, the responsibility to pay damages lies with the

authorities like MCD and NDMC.

8. The MCD through the Veterinary Officer, Shahadra North Zone, in its counter affidavit, states that it has been carrying out the drive to catch

stray bulls from time to time. In the year 2005 around 242 stray bulls were caught in the Shahadra North Zone with help of its skeletal staff and

infrastructure. A report of month-wise action for catching stray bulls is annexed to the reply. It was further stated that it is the duty of the individual

to exercise care and caution in the normal course and if accidents, like in the present case, occur due to negligence on part of the individual the

same cannot be compensated. Further reliance is placed upon the statement of the petitioner to say that they are self-contradictory as she had

earlier stated that the deceased was injured by the two fighting bulls and later, in her representation before the MCD dated 16.6.2005, she stated

that he was hit by one bull only. It is urged that no independent witness was examined by the police to support the case that the deceased was

indeed injured during a stray bull fight.

9. The petitioner's counsel urged that there is no dispute regarding the facts of the case; the petition is based on established facts emerging out of

investigation carried out by the Police. The Inquest report prepared by the police was further corroborated by the post-mortem report of the GTB

hospital. It was urged that as the overall governance of the city of Delhi remains with the GNCTD, it cannot wash its hands of by transferring the

onus to compensate on the MCD. Counsel contended that the MCD is liable by virtue of statutory provisions, and the directions of this Court.

10. The petitioner places reliance on D.K. Basu Vs. State of West Bengal, that in case of violation of any fundamental rights compensation can be

awarded under public law, which is exclusive of the remedy available in private law for tortious negligence. It was observed that,

44. ...Grant of compensation in proceedings under Article 21 and 226 of the Constitution of India for the established violation of the fundamental

rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability

for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector

and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the

courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to

stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a long drawn and

cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the

citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased

victim, who may have been the bread winner of the family.

46. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , it was held:

Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of

Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State

as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under

Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the

public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the

courts have, therefore, to evolve new tools to give relief in public law by moulding it according to the situation with a view to preserve and protect

the Rule of Law, while concluding his first Hamlyn Lecture in 1949 under the title ""Freedom under the Law"" Lord Denning in his own style warned:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do

things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the

remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and

shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the

winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for

negligence... This is not the task of parliament.... The courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised

the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this

country.

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54. ...The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is

lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries

of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved

in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is,

thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the

State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages

in a civil suit.

11. The petitioner also relies on the Nilabati Behera case (supra), where it was held that:

14. In this context, it is sufficient to say that the decision of this Court in Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, upholding the State's

plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for

contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence

to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental

rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in

Rudul Sah Vs. State of Bihar and Another, and others in that line relate to award of compensation for contravention of fundamental rights, in the

constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal related to value of goods seized and not

returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process,

and not a claim for compensation for violation of fundamental rights. Kasturilal is, therefore, inapplicable in this context and distinguishable.

12. The petitioner contends that the respondents cannot be absolved of the liability to compensate her loss by suggesting that onus of removing the

stray cattle rested with the MCD, the petitioner relied upon a decision of this Court, Darshan v. Union of India 2000 ACJ 578 wherein it was

observed that,

9. A Division Bench of this Court in Shyama Devi and Others Vs. National Capital Territory of Delhi and Others, also awarded compensation

under Article 226 of the Constitution is a case where there was negligence in not defusing a rocket, resulting in the death of a Constable.

Compensation had also been awarded by this Court as well as by the Apex Court in writ jurisdiction in several cases of custodial deaths. Coming

to instant case, it is one of *res ipsa loquitur*, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the

record in leaving the manhole uncovered. The dereliction of duty on their part in leaving a death trap on a public road led to the untimely death of

Skattar Singh. It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and

far reaching. It would, undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in

deprivation of life or limb of a person. Accordingly, Article 21 of the Constitution is attracted and the petitioners are entitled to invoke Article 226

to claim monetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights.

10. From the foregoing, it is clear that the present writ petition for grant of compensation in the case of breach of public duty by instrumentality of

the State, resulting in deprivation of life, would be maintainable under Article 21 of the Constitution of India.

13. The MCD urges that there is no general duty cast upon it, to ensure that roads and public spaces are kept free of stray bulls or cattle. It is

contended, in reiteration of its counter affidavit, that having regard to the peculiar conditions in India, those who ply their wares and engage in

hawking and other such commerce, on the public streets are deemed to be aware of the likely hazard and probable harm which would befall them,

in the event of wayward cattle or other animals attacking them. It is contended that in the absence of a clear duty, and its demonstrable breach, by

the public authority, the court should not award damages in exercise of public law jurisdiction.

14. It was also urged, in addition, that apart from lack of any discernable public duty, cast on MCD, the factual disputes arising in this case are

incapable of decision in writ proceedings, as a proper trial would unravel the true circumstances. Here, the mere assertion by the petitioner that her

husband died due to aggression and fighting of two bulls is insufficient to cast liability on the breach of duty principle.

15. The above narrative discloses that the petitioner's claim is for the breach of the duty of care, which she claims, the respondents owed to her

deceased husband. The latter, on the other hand, deny any such duty and also assert that the questions sought to be agitated in this case are best

left for determination by the courts in civil proceedings.

16. The relief of compensation under public law, for injuries caused on account of negligent action, or inaction or indifference of public

functionaries or for the violation of fundamental rights is a part of the evolving public law jurisprudence in India. The High Courts" and the Supreme

Court's powers, under Article 226 and Article 32 respectively, to mould the relief so as to compensate the victim has been affirmed by the

Supreme Court on numerous occasions including Common Cause, Common Cause, A Registered Society Vs. Union of India and Others, , The

Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, , Delhi Domestic Working Women's Forum Vs. Union of India

(UOI) and Others, , D.K. Basu Vs. State of West Bengal, , Smt. Postsangbam Ningol Thokchom and another Vs. General Officer Commanding

and others, Rudul Sah Vs. State of Bihar and Another, The concept of compensation under public law must be understood as being different from

the concept of damages under private law. Compensation under public law must not be merely seen as the monetary equivalent for compensating

towards the injury caused, but also understood in the context of the failure of the State or state agency, to protect the valuable rights of the citizens,

particularly of the marginalized and the disempowered. In the decision reported as State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and

Others, , the Supreme Court emphasized that the nature of the proceedings - through writ petitions or through other civil jurisdictions, would not

make any difference, in applying the principles for award of damages in case of violation of a public law right or entitlement, of a citizen, or where

he complains of violation of fundamental rights.

17. It has been established now, for nearly three decades, that the right to life enshrined in Article 21 is not a right to mere vegetative ("animal")

existence, but to a life with dignity and a decent standard of living. The injury, suffered due to the state's or its agencies' neglect in the

performance, or the wrongful performance of its duties, is as actionable in public law, as in tort. In this background the failure of the State to

prevent the occurrence of negligent acts by its employees, or those who are accountable to it, within premises under its control, or in respect of

zones of activities falling within their jurisdiction strikes at the root of the right to life, guaranteed under Article 21 of the Constitution of India.

18. In Chandrima Das (supra) the Supreme Court mentioned about obligation of the States to ensure that women are not victims of violence,

including rape and held that this right is consistent with the right to life under Article 21, of all who are protected by our Constitution. In that case,

the aggrieved was a victim of rape committed upon her in a railway compartment. The court brushed aside the Central Government's disclaimer of

liability, and declared that the right of the victim under Article 21 had been violated. It awarded Rs. 10 lakhs as public law damages. It is

noteworthy to see that the court did not see who was the real perpetrator, or what duty he owed to the Government; it was held sufficient that the

wrong occurred in a railway coach, which was under the control of the railway authorities.

19. It would also be useful to notice the observations of the Supreme Court, in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and

others,

a claim in public law for compensation" for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the

Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting

to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for

damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to

the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this

principle, which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the

only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers

20. As far as the respondents' argument regarding the efficacy of the writ remedy, under Article 226 of the Constitution of India is concerned, the

Supreme Court held, in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , that merely

because one party to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the

Constitution is not always bound to relegate the disputants to a suit. The court observed that in an appropriate case, the court has the jurisdiction to

entertain a writ petition involving disputed questions of fact, since there is no absolute bar for entertaining such cases.

Duty of care

21. The respondents' principal argument in this proceeding is that there is no discernable duty of care in ensuring that stray cattle or bulls are kept

away from roads and streets, and that those plying their trades have to take care of themselves against any such hazards.

22. It would be necessary to see whether there is any obligation cast upon the authorities, in this regard, under the relevant enactments. u/s 298 of

the Delhi Municipal Corporation Act, 1957 and Section 202 of the New Delhi Municipal Council Act, 1994 (hereafter the Act) all the public

streets within Delhi or New Delhi are vested in the Municipal Corporation of Delhi or the New Delhi Municipal Council, as the case may be. These

streets are under the control of the MCD and the NDMC, which are also responsible for their maintenance and regulation. The MCD, which is

primarily asked to account for its action here, is also empowered to regulate public streets; it has the right to invoke eminent domain, for the

purpose of road development, expansion, etc. Sections 42 of the Act lists out that the Obligatory Functions of the Corporation, the ones in relation

to Public Streets are-

(n) the construction, maintenance, alteration and improvements of public streets, bridges, culverts, causeways and the like;

(o) the lighting, watering and cleansing of public streets and other public places;

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

(q) the naming and numbering of streets and premises;

23. In Common Cause (Regd Society) v. Union of India (UOI), & Govt. of NCT of Delhi, MCD and NDMC and Ram Pratap Yadav v. MCD

(decided on 03.11.2000) a decision of this Court, the court was concerned with the precise duty of the MCD to maintain public roads and streets

and ensure that they are free of stray cattle, for the safety of road users (which would include pedestrians, those plying vehicles and vendors on

footpaths, etc.) it was observed that-

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

accidents. Besides, it depicts a very dismal picture of the capital. It is also very cruel on the bovine animals as they are let loose on the roads

because the owners do not want to feed them. These animals have to fend for themselves. They eat whatever comes in their way including garbage

and plastic bags. This affects their health and causes extreme trauma to them. We also find that Gosadans, by and large, have not been able to

fulfill the purpose for which they were established. The fact that the animals which were made over to Gosadans have disappeared speaks volumes

about their working. The capital city of Delhi should be a show window for the world. The stray cattle on the roads gives a wrong signal. Cattle

and other animals which are let loose on the roads by their owners and also responsible for filth, squalor and outbreak of diseases.

16. It appears that the State and its agencies are impervious to the menace of stray cattle. They have not taken any effective steps to prevent the

cattle and the bovine animals from taking to the roads. This has affected the quality of life of the citizens. The inaction of the state and its agencies

impinges upon the fundamental right of the citizens under Article 21 of the Constitution. Under Article 48 of the Constitution, the State inter alia is

required to protect and safeguard the forests and wild life. The State by neglecting to perform its duty in preventing the menace of stray cattle is

avoiding implementation of Article 48 of the Constitution. It is the duty of the State to keep in view the directive principles of the State policy which

are fundamental in the governance of the country and to apply those principles in making the laws. No effective law has been made to prevent the

owners of bovine animals including cattle and cows from being let loose. In the facts and circumstances, therefore, it has become necessary to give

directions to the State to control and prevent the menace of stray cattle.

17. Accordingly, we direct and observe as follows:

3. The MCD and the NDMC shall employ sufficient number of vehicles to ferry the impounded cattle.

4. The MCD, the NDMC and the police department should work together to stop the menace of stray cattle.

5. Co-ordination Committees shall be constituted in each of the Police Districts. Each committee shall consist of the Deputy Commissioner, MCD

of the area/Secretary, NDMC, and the Deputy Commissioner of Police of the concerned District. The two-member Committee shall be

responsible for eradicating the menace of stray cattle.

7. Cattle and bovine animals located in Delhi shall have a tag number tied around their necks. The tag number must be indicative of the owner to

whom the animal belongs so that there is no difficulty in tracing the owner.

8. Prosecutions should be launched u/s 98 of the Delhi Police Act, 1978, and Section 289 of the Indian Penal Code, 1860 against the owners of

any cattle and bovine animals which are found on the streets and roads.

9. The MCD and the NDMC should employ sufficient number of persons to catch stray cattle and bovine animals. Once they are caught they shall

be impounded and may be released only on payment of fine of at least Rs. 1,000/- each. The vehicles which are used for carrying impounded

cattle and bovine animals ought to be fitted with ramp in order to obviate the chance of injury to them. The transit and handling of cattle and bovine

animals after being impounded shall be in consonance with the provisions of the Prevention of Cruelty to Animals Act, 1960.

18. The roads of Delhi should be made free of stray cattle and bovine animals by 1st February, 2003. No cattle or bovine animals shall be

permitted on the roads after the aforesaid date. The responsibility to comply with the order will be that of the aforesaid Committee in their

respective areas.

24. In a decision of the Rajasthan High Court Sanjay Phophaliya Vs. State of Rajasthan and Others, placing reliance on L.K. Koolwal Vs. State

of Rajasthan and Others, it was observed that-

it is primary, mandatory and obligatory duty of Municipality to keep city clean and to remove insanitation, nuisance etc. The Municipality cannot

take plea whether funds or staff is available or not.

It was further observed that-

9. It is a serious matter when the dogs and other animals suffering from rabies bite animals and persons. The duty becomes more onerous on the

respondents with regard to the dogs and such animals. The staff cannot say that its duty is complete if action is taken only on complaints. They

must not sit in the office but should continuously take round of the city. If any inaction is found on the part of the staff, the respondents are bound to

take disciplinary action against such staff. If still any accident happens, then the injured person or relative of the deceased person would be

competent to invoke the provisions of Section 188 of IPC against such a negligent staff. It is expected that the roads of Jodhpur be cleaned from

these stray animals within a period of four months from today. The respondents would be free to get work through contractors.

25. In *Milkmen Colony Vikas Samiti Vs. State of Rajasthan and Others*, the Supreme Court directed the Municipal Corporation of Jodhpur to

remove unattended stray animals, such as, stray cattle, bulls, dogs, pigs etc. from the city of Jodhpur as expeditiously as possible and in any event

on or before 30th April, 2007. Further, in a string of decisions by various High Courts it was observed that keeping the public streets free from the

menace of stray animals is the primary duty of the municipal bodies. In the light of these decisions, it is held that the duty to maintain streets and

public roads free of stray cattle is that of the MCD. This duty is owed to all members of the public, and is an absolute obligation.

26. In this case, the injuries on the deceased, recorded in the post mortem report, and the statement taken down by the police in the course of

investigation, corroborate the findings in the inquest proceedings, that death occurred due to the injuries inflicted by the fighting animals. The

statement recorded by the police, testifies the details regarding the events. In these circumstances, there is no "disputed question" as it were, that

requires resolution through civil court proceedings. The court is of opinion that in addition, the duty of care being statutorily cast on the MCD, this

is an instance where the maxim *res ipsa loquitur* would apply. This rule was explained in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit*

Ginning and Pressing Co. (P) Ltd. and Another,

The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause

of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but

cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle

of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself" or tells its own story. There are cases

in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant

to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Edn.) at p. 306

states: "The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the

defendant that a reasonable jury could find without further evidence that it was so caused.

In this case, the petitioner has been able to establish the essential facts that pertained to the death of her husband; these are the circumstances

where the two fighting bulls went near him, how in the ensuing tangle, he was grievously injured; the postmortem and inquest report corroborate

these. The circumstances have been outlined in the FIR and the statement recorded in those proceedings. If the MCD disputes these facts, it has to

displace them and not merely say that the petitioner has to establish the very same facts, through the same evidence in a civil suit. The facts shown

by the petitioner are sufficient to shift the onus, through the *res ipsa loquitur* maxim, upon the MCD, to reveal why it cannot be held responsible.

No such facts or evidence has been shown to the court, to disclaim liability.

27. In *Delhi Jal Board v. Raj Kumar and Ors.* 2005 VIII AD Delhi 533; the petitioner, who while riding a scooter drove over a manhole, that was

three inches below the regular road surface and met with an accident. The Court held the Jal Board liable and observed that when power is given

to do some act, it is often coupled with the duty to do that act properly. Therefore, the principle of strict liability is applicable against the State also.

The court further held that in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff,

even though the defendants may not have been at any fault. In *Chand (Shri) and Anr. v. Chief Secretary and Ors.* 2004 IV AD Del 29; the

petitioner's son suffered a tragic death when a concrete slab from the water tank fell on his head at the UTSC complex, PWD (E) Delhi. The

Court held that it was undoubtedly the duty of the respondents (Chief Secretary, NCTD and Chief Engineer, PWD zone, NCTD) to maintain the

water tank and other amenities in the building in a manner so as not to endanger the lives of the passersby or those using such facilities. The court

held the respondents guilty of negligence and awarded compensation.

28. In Dharamvir Kataria (Col.) Vs. Union of India and Others, the petitioner's wife died due to fall in the pit of a lift. The lifts were installed by

M/s. Bharat Bijlee Limited under the supervision of CPWD. The contract for the operation and care of the lifts was awarded to M/s. A.G.

Enterprises. That the CPWD office records revealed that a lift operator with knowledge of the lift mechanism and an attendant was to be provided,

which was not done. As to who should pay compensation the Court held:

... in the first instance, the compensation shall be paid by the first respondent - Union of India as its functionary, the third respondent (Director

General of Works), was negligent in discharge of its duty which resulted in the breach of the right of Mrs. Mangla Kataria to life guaranteed by

Article 21 of the Constitution. It will, however, be open to the Union of India and the third respondent to proportionately recover the amount for

the fourth and fifth respondents (M/s. Bharat Bijlee Limited and M/s. A.G. Enterprises) as they were equally guilty of culpable negligence

29. In Chitra Chary (Smt.) and Ors. v. DDA and Ors. 2005 (I) AD Delhi 29 Delhi Development Authority had awarded the work of construction

to a private contractor. The work required trenches to be dug. The terms of contract required the contractor to take certain precautions, which

were not adhered to. Due to this negligence the first petitioner's husband fell into the trench and later on died. It was held:

facts as noted aforesaid reflect the general cynical irrelevance towards safety norms to be followed as one notices everyday whenever municipal

agencies carry out construction work either by themselves or through a contractor. The facts evidence that usual mood of complacency seen each

day. What is listed as a safety measure is observed more in breach and less in compliance. This Court has witnessed construction of flyovers in

Delhi, digging of roads for sewer, repair work, etc., safety norms are found not being adhered to. It is the bounded duty of municipal agencies to

ruthlessly require adherence to the safety norms in their minutest detail and in their exacting requirements. Evidence on record conclusively

establishes breaches of putting barricades for the safety of passers by.

It was also held that:

any activity under authority of the State has to be reckoned as that of the State as itself. The State has to be held vicariously liable.

In Sunil Manoj Mathew and Anr. v. BSES Rajdhani and Ors. 2006 (I) AD Delhi 698 a person died in a fatal accident caused due to a metal

ladder used for repairing street lighting rolling down from the pavement to the main road resulting in a collision with the motorcycle of the deceased.

It was held by the court that:

...In any event it is not denied by BSES that the ladder was being used for repairing street lighting. This responsibility or duty is entirely that of

BSES. The fact that the BSES had contracted this duty and responsibility to Shri Mudrax Parashar will not absolve it of its liability. If the liability

is not direct, it is certainly vicarious in nature..... Public and civic Authorities have on a rampant and ubiquitous scale adopted a cavalier and

careless attitude in fulfilling their functions, totally oblivious of the hazards and dangers that are caused to the public by their negligence functioning

30. The next question is what should be the appropriate amount payable to the petitioner as compensation. There is no guidance in statute law, in

such cases. There is an element of inappropriateness in borrowing from statutes, as for instance, the Motor Vehicles Act, or the Workmen's

Compensation Act, etc. for assessment of damages. Yet, the court has to take into consideration various factors. Here, the deceased was 40 years

when the accident occurred. He is survived by the petitioner, his widow and five children, of whom three are minors, and dependant parents. The

accident was the consequence of neglect of the MCD which did not ensure proper supervision of the area, to avoid the menace of stray cattle, that

could have prevented the kind of accident which actually took place. Considering these facts, it is held that the MCD is liable to pay compensation

to the petitioner. In the facts of this case, the court directs the said respondent, i.e. MCD to pay Rs. 10,00,000/- (Rupees ten lakhs only). The said

amount shall be disbursed, and kept in the Registry of this Court; it shall be kept in an interest bearing fixed deposit in a nationalized bank, and

renewed from time to time, for a maximum of three years. The Registrar shall periodically disburse the said interest to the petitioner. The petitioner

shall be present every second Monday of March, June, September of each year to receive the proceeds of the fixed deposit. If for some reason,

any amounts are required, the petitioner may apply to the court. On maturity, the amounts shall be disbursed to the petitioner.

31. The writ petition is allowed in terms of the above directions; the MCD shall deposit the above sum of Rs. 10,00,000/- with the Registry of the

Court, within four weeks. It shall also pay costs, quantified at Rs. 25,000/- to the petitioner; the same shall be paid to the petitioner directly within

four weeks.