

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : COMPENSATION

Date of decision: November 10, 2006.

WP(C) 7171/2003

Miss Rinchu

Through

Petitioner

Mr.Aman Lekhi, Sr.Adv with
Ms.Meenakshi Lekhi, Mr.Rajan
Chaurasia, Mr.Shyamal
Kumar, Mr.Rakesh Kumar,
Mr.Jaspreet S Rai, Adv.

Versus

Govt.of NCT of Delhi & ors.

Through

Respondents.

Ms.Avnish Ahlawat with
Ms.Purnima Sethi, Ms.Kanika
Wadhera and Ms.Latika Chaudhary
for respondents 1-2.
Mr.K.N.Balgopal with
Mr.A.P.Mukandan for
respondent no.3 with Mr.B.K.Dadu,
representative of respondent no.3.

Manmohan Sarin, J

1. Petitioner, Miss Rinchu, a Nurse by profession, was subjected to sexual assault and violence by a ward boy/sweeper Bhura while attending to a paralytic patient at respondent no.3-Shanti Mukund Hospital (in short referred as 'SMH') on the intervening night between 6th and 7th September, 2003. She lost her right eye.

2. By this petition, she seeks adequate compensation from respondent no.1-Government of NCT of Delhi, respondent no.2-G.T.B.Hospital, a hospital run and controlled by respondent no.1, where she had been referred for consultation and specialized treatment and from respondent no.3-SMH, a nursing home granted a licence by respondent no.1 and registered under the Delhi Nursing Home Registration Act. Additionally petitioner, seeks direction to respondent no.3 for provision of free medical treatment and a suitable job for herself. Petitioner also seeks revocation/cancellation of licence of respondent no.3 to run a Nursing Home. Ward boy Bhura was prosecuted, tried and convicted for the offence under sections 376/326/342 IPC vide judgment dated 27th April, 2005 by Mr. J. M. Malik, the then Addl. Sessions Judge (now Hon'ble Judge, Delhi High Court). He has been sentenced to life imprisonment and a total fine of 10,000/- and in default of payment of fine, to simple imprisonment for three years. His appeal against conviction has since been admitted in this court. Petitioner has not impleaded Bhura, the


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primary tortfeasor as a respondent in the petition. This is understandably so since Bhura is incarcerated and bereft of any means.

3. Following issuance of notice in writ petition, Counter-affidavits have been filed by respondents 1-2 and respondent no.3. Written synopsis and submissions have also been filed by the parties and the counsel for the parties have been heard at length and the records of medical examination and treatment accorded to the petitioner at G.T.B.Hospital and SMH have been perused and considered.

4. Respondent no.3-SMH objected to the maintainability of the writ petition for grant of compensation alleging that petition raised disputed and complex questions of facts and the circumstances of the case were such that it should not be decided in the writ jurisdiction and resort should be had to the civil forum.

5. Petitioner avers that while she was on night duty attending to Mr.S.K.Kaushik, a paralytic patient who could neither speak nor move, in room no.208 at SMH, at about 1.30 AM, ward boy Bhura who was also on night duty, approached the petitioner and touched her in an undesirable manner. She protested and screamed and asked Bhura to get out of the room. Bhura, realizing that her loud screams might be heard, held her tight, inserted his hand in her wind pipe in order to choke the voice, clawed her on the throat. It is alleged that he used criminal force with such intensity that her entire right eye ball got detached from the socket and came out. It is averred that he hit her hard on the head and threw her against the wall of the room and threatened to kill her. Further he pushed her down and committed rape on her. Bhura thereafter lifted and threw her into the bathroom, where she fell down and became unconscious. Petitioner vomited blood and kept bleeding due to rape as well as due to grievous eye injury. Petitioner partially regained consciousness at about 6 AM when another ward boy came into the room, opened the bathroom door and found her there. Petitioner saw her eye ball hanging by the soft tissues around the cheek and she fainted by fright. It is the petitioner's case that respondent no.3, apart from its responsibility for the act of its ward boy/employee, had failed to provide adequate security and was grossly negligent in attending and providing medical aid and treatment to the petitioner. It is alleged that despite petitioner having been found in injured state in the morning around 6 AM, she was not transferred to casualty for over two hours i.e till about 8 AM. MLC was registered only at 8.15 AM. Learned counsel for the petitioner, listing out various omissions on the part of respondent no.3, submits that there was no resident Ophthalmologist in the hospital. The consultant Ophthalmologists on call, on being contacted, were not available. Hence vital and timely treatment could not be given to the petitioner. Even prophylaxis against STD/HIV/Conception was not given. The gynaecological examination was done by a junior gynaecologist and not by a consultant. Petitioner also claims that she was sent unattended to G.T.B. Hospital at about 11.30 AM. There, she was not attended to till 1.30 PM. Petitioner alleges that no treatment was given to her at the G.T.B. Hospital except bandaging her eye. No senior consultant or doctor examined her. A Second Year Post Graduate Resident only examined her and simply had telephonic consultation with the Reader in the Department. Petitioner was shunted from fifth floor to ground floor three times in the hospital. She had also been

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kept in the open passage exposed to high risk of infection. Petitioner alleges that respondent no.2 failed to provide adequate treatment and sent her back to SMH on the plea that she had been referred only for ophthalmology examination. Mr.Aman Lekhi, learned Senior Counsel appearing on behalf of the petitioner submits that respondents-hospitals failed to provide adequate treatment apart from being grossly negligent. Their attitude towards the petitioner, a victim of a gory attack was one of callousness and apathy.

6. Upon return from GTB Hospital, SMH advised the petitioner to go home as needful had been done. There was a mass protest by the residents of the colony where the petitioner resided and the Malyalee Association had brought her back to SMH on the evening of 7th September, 2003. However, the Hospital resisted admitting her and it was only on the following morning, at 8 AM, that she was admitted. Petitioner's bandage was opened on 9th September, 2003 when it was found that petitioner's eye ball was still lying outside the socket hanging with soft tissues. No surgery was done by SMH and she was again referred to GTB Hospital. An expert board examined her and the surgery, entailing removal of eye ball was done on 10th September, 2003.

7. We may notice here that parties have produced on record, reports of the two committees, one constituted by the National Commission of Women into the incident and the second one by the Directors of Health Services which specifically went into the aspect of delay in providing treatment to the victim Rinchu. The latter committee was headed by Director, Guru Nanak Eye Hospital. The said report and its conclusions have been reproduced in extenso in the affidavit filed on behalf respondent no.1 by Dr.Ashok Kumar, Medical Superintendent Nursing Homes, which are adverted to later in the judgment.

8. We may briefly notice the pleas taken by respondents 1 & 2 in their counter-affidavit and written submission. It is averred that there was no chance of salvaging of the eye sight or recovery of the eye, even when the petitioner had been first seen in the casualty of the hospital and no fault was found with the doctors of the GTB Hospital where the petitioner had been referred to, for consultation and examination. Respondent no.1 contends that it was the responsibility of respondent no.3-SMH to provide adequate security so that such incidents are averted. Respondent no.1 further submits that they had taken action against respondent no.3 for non availability of resident Ophthalmologist and Consultant on call. The Ophthalmology Department was closed pursuant to an order passed on 10th February, 2004 w.e.f 21st February, 2004 and respondent no.3 has been permitted to start the department only on 15th June, 2004 after being satisfied that hospital was able to provide Ophthalmology services round the clock. Respondents 1 and 2 claim that they have provided free medical services and would continue to provide the same as and when the need arises. It is contended that vision in the right eye of the petitioner was completely lost when she was brought to GTB Hospital, while vision in the left eye was recovered with 6/6 vision.

9. Respondent No.3-SMH in its counter-affidavit and written submissions, claims that SMH is a charitable organization operating on no profit-no loss basis. It provides

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free OPD services to the public at large and has 25% beds reserved for indoor treatment for the poor and the needy patients. Miss Rinchu, petitioner was not an employee of SMH. She was a private attendant of a patient Mr.S.K.Kaushik. Respondent no.3 condemns the attack by Bhura, who was a ward sweeper employed by Baba House Keeping Services. The latter had been given contract for the provision of said services at the hospital. The allegations of any delay in providing emergency and first aid treatment are denied. It is claimed that as soon as Rinchu was noticed by a ward boy in the bath room, sister-in-charge was informed. The statement of the ward boy Byas to the police shows that he informed sister-in-charge and immediately took Rinchu to the casualty with the help of other staff. The Hospital Administrator and the police itself had arrived at 7.30 AM and case was registered at 8.15 AM. The eye had been duly bandaged and gynaecological examination was done. Unfortunately, out of the two Ophthalmology Consultants on call, Dr.Angra was on leave and Dr.Rajiv Ghai was not available. Rinchu was thereafter referred to GTB Hospital for examination of the eye. She had been taken there in hospital ambulance accompanied by Dr. Sachin Gupta. The allegation that she was left unattended was denied. She was received at the casualty of GTB Hospital and sent to the emergency ward for eye examination. It is claimed that no treatment except bandage of eye was given to Rinchu at GTB Hospital and she was sent back to SMH with the advice to report in the Eye OPD for further follow up action. The discharge summary by the GTB Hospital shows "FUC in OPD-Eye". It is claimed that as per protocol, petitioner's bandage was not to be opened for 48 hours and therefore after return from GTB Hospital, she was examined on 9th September, 2003 by Dr.Angra who discovered that eye ball was still lying outside the orbit on the lids and needed to be removed on emergent basis. This, the hospital contended, was contrary to the indications given by the record of examination at GTB Hospital which is as under:-

"V A Rt eye No P1 whole eye ball has come out protruding completely with attachment at one point the eye ball was lying outside the globe."

Further the emergency record ticket provided to the patient indicates:-
'R.E. bony orbit enucleated and eye ball is dangling by the conjunctiva optic nerve avulsed.'

It is claimed that use of the expression "enucleated" gave the impression that eye ball had been removed. In any case, it was the basis on which the resident doctor of SMH proceeded. The foregoing suggests that respondent no.2-GTB Hospital failed to provide necessary treatment of removal of eye ball and thus exposed the petitioner to risk.

10. Coming to the question of compensation as claimed, it is urged by respondent no.3's counsel Mr. Balgopal that writ petition is not the proper forum and where disputed questions of facts arise for determination, the court should relegate the petitioner to its remedy in civil forum. Mr.Balgopal next contended that as per the findings of the Inquiry Committee constituted by respondent no.1, the eye sight of the patient could not have been restored as the optic nerve had been avulsed. Given the circumstances, the very basis of the writ petition, that the petitioner has lost her eye sight on account of failure to provide adequate medical treatment was misplaced. Learned counsel for

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respondent no.3 also contended that it was not certain that petitioner had been raped and it could be a case of attempt to rape. The plea is hardly of any consequence as failure to provide adequate and timely medical treatment remains, irrespective of whether it was rape or attempt to rape. Moreover, Bhura has been convicted by the learned ASJ after a full trial even though his appeal is pending. Counsel also submitted that it was wrong that petitioner was not attended till 8.30 AM on 7th September, 2003. The statement of the Sister on duty shows that she was given first aid in the ward itself and the same finds corroboration by the petitioner's own statement in FIR. He also submitted that petitioner's allegation that she was packed off in an auto to GTB Hospital again is incorrect as she had been sent in an ambulance as found by the Inquiry Committee. Counsel next contended that this was an isolated and freak instance. Respondent no.3 had taken adequate steps for security at the Nursing Home. There were 19 hidden cameras at strategic places. There were three supervisory staff and 14 security personnel to look after the security. However, no camera was installed inside the ward or a private room so as to avoid invasion of privacy. He submits that this plea may not be enforceable against a private body like respondent no.3, as the case involved serious disputed question of facts, writ petition was not the appropriate remedy and the petitioner ought to be relegated to the remedy of a suit. He places reliance on Pt.Parmanand Katara Vs. Union of India and ors AIR 1989 SC 2039 to justify the reference being made by respondent hospital to the GTB Hospital for specialist treatment in Ophthalmology. The cited case, apart from emphasising the necessity of provision of primary medical aid to a patient even if it was a Medico legal case, by the hospital and institutes, holds that after provision of primary medical aid, patient can be referred to a specialty institute for expert treatment. Reliance is placed on the above observation to justify the reference to the GTB Hospital on account of non availability of the consultant on call.

11. On the question of maintainability of petition, reliance has been placed on Dr.Pitchiah Vs. Lisie Hospital 1998 (2) KLT 33. In the cited case, respondent Lisie Hospital was run by a private individual/trust. The court held " the respondents are not amenable to the writ jurisdiction. They are not statutory authorities. They are also not having any obligation to discharge any public duty or public function." The court declined to entertain the writ petition challenging the termination of services of a Doctor by the said hospital. Similarly, reliance was placed on Smt.Shakuntala Devi Vs. Delhi Electric Supply Undertaking & Ors. JT 1995 (1) SC 547. This was a petition under Article 32 where relief was sought by a widow with three children whose husband had been electrocuted by a live wire. The court observed that though it was true that question of negligence could be properly examined in a suit but considering that decision in a suit would involve long delay resulting in lingering of the misery of the stranded family, it gave directions for ex-gratia compensation and payment of amount by LIC. The court observed that judgment is rendered on the peculiar facts of this case and would not be taken as a precedent in any other matter. Counsel relying on this observation, urged that appropriate forum is the civil forum. Lastly, he placed reliance on Chairman, Grid Corporation of Orissa Ltd (GRIDCO) and Ors. Vs. Smt.Sukamani Das and anr 1995 (5) Scale 539. The Supreme Court observed as under:-

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'The High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were action in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No.1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defenses raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy.'

12. He submits that this unfortunate incident had taken place notwithstanding the security measures taken and on account of factors beyond the reasonable control of respondent no.3. He submits that respondent no.3 is a charitable trust and none of the trustees receive any consideration or have any financial interest in the hospital.

13. Counsel submitted that there was no failure on the part of respondent no.3, in its duty to take care, either in taking adequate security measures or in maintaining surveillance. The incident had happened on account of one of the members appointed by a contractor who was providing house keeping services. There was no failure or negligence on the part of respondent no.3 in rendering prompt treatment and providing medical aid to the petitioner. Petitioner had been duly referred to a specialty hospital. He submitted that respondent's doctors followed the established protocol of not opening the bandage for 48 hours after enucleation. It was on account of use of the said expression by the GTB Hospital's Doctors in their report that bandage was opened only on 9th September, 2003 and when it was found that eye ball had not been removed and was still hanging, petitioner was sent to GTB Hospital for the same. He submits that as the optic nerve had been avulsed, there was no question of the sight in the right eye being saved.

14. Having noticed the relevant facts, submission of the petitioner, response thereto by the respondents, let us analyse the factual and legal position which emerges on the issues arising for determination in this case as also grant of compensation to the petitioner.

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15. It would be worthwhile to reproduce for facility of reference, the conclusions reached and recorded by the Inquiry Committee constituted by the Director of Health Services to report whether adequate and appropriate treatment had been provided by respondents 2 & 3 and whether there was any lapse therein. Further, whether there was any negligence on the part of treating doctors and whether there was any lapse in providing security to the private nurses by SMH and steps to be taken to prevent such instances. The Inquiry Committee has recorded the statement of concerned persons, reviewed the medical records and discussed the same in its report. It recorded the following conclusions:-

“The Gynaecological findings indicate that the possibility of an attempt to rape cannot be ruled out. However, it needs to be substantiated by the pending forensic evaluation reports.

It is an unusual case where the eyeball has been avulsed from the socket manually by an act of violence and the victim has been so shocked (or lost her consciousness) that she could not raise any effective alarm during the assault, or even after seeing that she had lost one eye on regaining consciousness. The case notes written by the doctors have not been properly worded which has created more confusions. As per the term of reference of the inquiry the committee reached the following conclusions:-

I. There is apparently a lapse in the management of this case since:

a. No prophylaxis against STD/HIV/Conception was administered to give the benefit of doubt either at Shanti Mukund Hospital or GTB Hospital.

b. The arrangements to deal with ocular emergencies and treatment should have been available at Shanti Mukund Hospital. Moreover, it was the duty of the consultant on call duty to be physically available or reach the hospital within a reasonable time to attend the emergency.

c. First eye examination done only after four and half hours was undesirable. The patient should have been seen immediately and suitable treatment/directions given at both the hospitals.

d. The patient should have been treated at GTB Hospital rather than being sent back to Shanti Mukund Hospital “only” after examination (on 7.9.03 afternoon itself).

e. Doctor on duty at Shanti Mukund Hospital on 7.9.03 evening should have been more careful in reading and interpreting the notes provided by GTB Hospital. An examination done at that stage could have saved this awkward situation and unnecessary delay in final treatment.

II Although there was no chance of salvaging the sight or retaining the eye even when the patient was first seen in the casualty at Shanti Mukund Hospital, casual, callous

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and apathetic approach to provide minimum medical aid by both the hospitals indicates lack of compassion.

III The second floor room where the incident occurred is that the last room in the corridor. There is an investigation laboratory across the room no.208 which remains open at night as well and nurse's station is in the beginning of the corridor. The security arrangements details as provided by the Medical Advisor of Shanti Mukand Hospital are enclosed. The Committee felt that it was not in a position to comments regarding the adequacy of the security arrangements provided to the private nurse on that day.

Dr.S.K.Agrawal Dr.D.K.Mehta Dr.(Mrs.)Sudha Prasad
Member Chairman Member”

16. From the conclusions recorded, it would be seen that treating doctors at both the hospitals had omitted to give any prophylaxis against STD/HIV/Conception and it was an omission on their part. Secondly, SMH, which had Ophthalmology Department functioning since 1985, had failed in its duty to have a consultant on call available, so as to physically reach the hospital, within a reasonable time, to attend to the emergency. In this regard, respondent no.1 had already proceeded against SMH by directing closure of their Ophthalmology Department for a period of three months. Non availability of a Ophthalmologist resulted in the eye examination being done only after four and half hours, which was highly undesirable. I find myself in agreement with the findings of the Inquiry Committee as aforesaid. The Inquiry Committee has rightly observed that the GTB Hospital should have treated the patient rather than having eye examination done and returning the patient back. It was obligatory on the hospital to provide necessary treatment as warranted by the petitioner's condition which meant immediate removal of dangling eye ball rather than conducting an examination and bandaging the same and returning the patient. This had unnecessarily exposed the petitioner to further trauma and high risk of infection, which could have affected the other eye.

17. SMH adopted a callous and apathetic approach in sending the patient home after she had been returned by the GTB Hospital after Ophthalmic examination. The GTB Hospital had failed in its duty, as noted earlier, to carry out the surgical procedure of removing the dangling eye ball. The Doctors at SMH had also misread and misinterpreted the finding regarding the enucleation of eye ball from the bony socket to conclude that surgery had been performed. They clearly ignored the next line that eye ball was dangling by conjunctiva optic nerve avulsed. On a careful reading, it is apparent that eye ball was still dangling by conjunctiva optic nerve i.e soft tissue and there was no further indication regarding any surgical procedure. In these circumstances, it was an omission not to open the bandage for the next 48 hours. I am also in agreement with committee's finding regarding the callous and apathetic approach adopted by the hospital in sending the patient home, who had suffered such an assault without according appropriate treatment.

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18. Coming now to the question of security to be provided by respondent no.3, the duty of the the hospital does not end by deployment of security personnel and supervisors, who would monitor and regulate the corridors or any entry. The Hospital also has the responsibility for providing a safe working environment. In present times, when women are increasingly being deployed in carrying out diverse assignments, the employer is under an obligation to provide a safe working environment. In the instant case, one of the ward boys deployed by respondent no.3, had assaulted and raped the petitioner, who was attending to a paralytic patient, admitted in the hospital of respondent no.3 with their consent and knowledge. When nurses are deployed at night, it was their responsibility to ensure that either the Sister-in-charge of the floor or a security personnel takes a round to see that there is nothing amiss. Had proper care or monitoring been done by the Incharge of the Nursing Station or other supervisory staff, such an incident could have been averted. The absence of any surveillance or monitoring is apparent from the fact that from 1.30 A.M till 6.20 in the morning, the petitioner who had become unconscious after the assault remained unattended for nearly five hours.

19. It is clear from the foregoing that respondents 2 & 3, apart from failing and neglecting to provide adequate, responsive and timely treatment, were grossly negligent in taking adequate measures to provide safe working environment especially to a female nurse such as the petitioner.

20. Respondent no.1 had the overall control and supervision in ensuring efficient management and running of respondent no.2, who committed various acts of negligence and omissions in providing appropriate treatment and taking due care and thus both failed in their public duties. Similarly, respondent no.1 had failed in its duty, while granting licence to respondent No.3 to function as a hospital and granting registration under the Delhi Nursing Home Registration Act, to ensure the availability of round the clock consultant and specialists for emergency treatment with respondent no.3. Respondent No.3 is also liable for its negligence and failure in providing proper treatment and omission to provide safe working environment and for the acts of its ward boy. Respondents are thus liable to compensate the petitioner.

21. Coming now to the maintainability of the writ petition, learned counsel for the petitioner, apart from relying on a number of decisions, refers to 'The Declaration on the Elimination of Violence against Women' which enjoins upon the States to exercise due diligence to prevent, investigate and punish acts of violence against women whether those acts are perpetrated by the State or by private persons and towards that end develop "just and effective" remedies for the harm they have suffered. He also referred to an article by Dr.P.Ishwara Bhat titled "Constitutional Feminism: An Overview(2001) 2 SCC (Journal)1". Dr.Bhat has advocated that Constitutional feminism requires an unconventional approach towards the law relating to rape, prostitution, pornography and dowry-related crimes.

22. It is not necessary to refer to numerous decisions cited by the learned counsel for the petitioner. It would suffice to notice few of these.


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Reference is invited to the observations of the Supreme Court in Rohtas Industries Ltd and anr Vs. Rohtas Industries Staff Union and ors (1976) 2 SCC 82. Even though the observations were made in a case relating to challenge to an arbitral award under section 10-A of the Industrial Disputes Act, same are apposite insofar as they relate to the ambit and scope of exercise of powers under Article 226 of the Constitution of India. The Supreme Court observed:-

“The expansive and extraordinary power of the High Court under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person even a private individual and be available for any (other) purpose even one for which another remedy may exist....This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and the High Court will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has by and large been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights.”

23. Reference is also invited to the decision of the Supreme Court in M.S.Grewal and anr Vs Deep Chand Sood and ors (2001) 8 SCC 151. The Supreme Court in the cited case, while dealing with a claim for grant of compensation in a writ petition under Article 226 and 32 of the Constitution of India, commended adoption of a justice oriented approach. It was a case for compensation against a school, when school children taken on a picnic, had drowned on account of negligence of the teachers.

The court considered vicarious liability of the school on account of the negligence of the teachers. It observed:-

“....The law courts exist for the society and they have an obligation to meet the social aspirations of the citizens since law courts must also respond to the needs of the people.”

“Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system- affectation of the people has been taken note of rather seriously and judicial concern stands on the footing to provide expeditious relief to an individual when needed rather than taking recourse to old conservative doctrine of the civil court's obligation to award damages.....Law courts will lose their efficacy if they cannot respond to the need of the society- technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not outweigh the course of justice.”

24. Reference is also invited to a decision of the Supreme Court in Dwarkanath, Hindu Undivided Family Vs. Income Tax Officer, Special Circle, Kanpur and anr (1965) 3 SCR 536 where it commented on the powers of the High Court under Article 226 to re-mould the reliefs to do

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justice without being whittled down by procedural restrictions as applicable in England. The court observed:-

“It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself.”

25. It may also be noted that based on the recent trend of judicial pronouncements, distinction between public law and private law remedy by judicial adjudication, is gradually being judicially marginalized and getting obliterated. [Refer Air India Statutory Corporation and Ors Vs. United Labour Union and Ors. (1997) 9 SCC 377 at 435]. The Court observed “the law in India is forging ahead of the law in England, guided as we are by our Constitution and uninhibited, as we are, by the technical rules which have hampered the development of the English Law.” Refer Life Insurance Corporation of India Vs. Escorts Ltd and Ors. (1986) 1 SCC 264.

26. In *Bodhisattwa Gautam Vs Subhra Chakraborty (Ms)* (1996) 1 SCC 490, the Supreme Court directed the person accused of rape to pay the victim, compensation during the course of trial and not just upon conviction. The suo motu order was passed by the Supreme Court in an appeal preferred by the accused. The Supreme Court accepted that the victim could have invoked the writ jurisdiction of the Courts in the facts of the case, fundamental rights being enforceable even against private bodies and individuals.

27. In view of the foregoing judicial pronouncements, it is held that the writ petition under Article 226 would be maintainable against the respondents for grant of compensation. Moreover coming to the facts and circumstances of the present case, there is no controversy with regard to the primary and basic facts. It is not in dispute that the petitioner, while on duty, suffered the assault and the injuries. Her right eye had been gouged out in the most abominable and cruel manner by the assailant who has been identified by her. Bhura, a ward boy deployed at respondent no.3 hospital, has been tried, convicted and sentenced for the offence of rape, grievous hurt and wrongful confinement by Additional Session Judge, Delhi. He is presently undergoing the sentence even though an appeal preferred by him against his conviction, has been admitted for consideration in this Court. It also stands prima facie established on record that the first examination of the eye of the patient-petitioner took place after nearly four and a half hours to five hours. Further that the dangling eye ball was bandaged and surgically removed two-three days after the incident and thus exposing the petitioner to high risk of infection. The report of the inquiry committee, as noted earlier, had brought forth lapses and omissions by respondent nos.2 & 3 in the treatment and care accorded. Respondent no.3 on the face of the record failed to provide safe working environment to a female nurse attending to a patient and is responsible for the acts of infringement of the fundamental rights of the petitioner as also for the acts of violence perpetrated on her in

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their premises by ward boy deployed in the course of employment. The so called disputes, as are sought to be raised by respondent no.3, are peripheral in nature and on matters of detail. They do not in any manner affect the aforesaid primary and basic facts which stand established on record.

The objection and pleas raised against non maintainability of the writ petition or the present case not being an appropriate one for grant of compensation in writ jurisdiction are accordingly rejected.

28. Coming to the question of determination of adequate compensation. The task of assessment of damages for non pecuniary damage in personal injury is a vexed one. Human suffering resulting from any serious bodily injury cannot in its very nature be valued in terms of money. But as the injured can be awarded only monetary compensation, the Courts make an endeavor as best as they can to quantify non pecuniary damage in terms of money having regard to the injury and the damage resulting from it. In the process of application, the wide discretion that the Courts exercise in making awards of compensation, like any other judicial discretion, has canalized itself into a set of rules. These rules are: (1) The amount of compensation awarded must be reasonable and must be assessed with moderation. (2) Regard must be had to awards made in comparable cases. (3) The sums awarded should to a considerable extent be conventional. It is only by adherence to these self imposed norms that the Courts can decide like cases in a like manner and bring about a measure of predictability and uniformity in their awards. The observance of these considerations is of immense significance and importance if administration of justice in this field is to command the respect of the community.

29. Further in the matter of R D Hattangadi Vs Pest Control (India) Pvt Ltd and Ors. (1995 ACJ 366 SC) the Supreme Court while dealing with a case of accident of a Lawyer resulting in permanent disability noted as follows:

“...so far as non pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future. (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit. (iii) damages for the loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened. (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

.....When compensation is to be awarded for pain and suffering and loss of amenities of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non pecuniary loss is not easy to determine but the award must reflect that the different circumstances have been taken into consideration.”

In Chairman, Railway Board and Ors Vs. Chandrima Das (Mrs) and Ors (2000) 2 SCC 465 involving rape of a foreign national in a railway yatri niwas, the Supreme Court refused to interfere with the grant of compensation of Rs.10 lakhs awarded by the High Court. This was an award made in the year 2000.

IQAC COORDINATOR
Karnataka State Law University
Hubballi-25.



Registrar
Karnataka State Law University
Navanagar, Hubballi-580 025.

30. Considering the horrific violence and trauma faced by the petitioner, a young woman of 19 years, apart from violation of her person leaving her psychologically shattered, she has been left with a permanent disability on account of loss of her right eye. It has to be recognized that it has handicapped her, prejudiced her potential as a professional nurse and affected her matrimonial prospects also. However, she had been given employment by respondent no. 1, bringing her some relief and succour.

Taking all the above circumstances and factors into account, the compensation to be paid to the petitioner is assessed at Rs.7.5 lakhs, of which Rs.5.5 lakhs shall be paid by respondent no.3 and Rs.2 lakhs to be paid by respondents 1 & 2. The amount to be deposited within 30 days in court. It is very often found that the amount of compensation when awarded and released to the claimant(s) is frittered away in avoidable expenses. This compensation is being granted in exercise of jurisdiction under Article 226 of the Constitution. With a view to preserve the corpus of compensation for the benefit of the petitioner who is a young lady, it is necessary to put certain restrictions, even though she is a major, regarding the utilization of compensation. Accordingly, I direct that out of total compensation amount of Rs.7.5 lakhs, Rs.1.5 lakhs be released to the petitioner forthwith. Balance amount of Rs.6 lakhs be kept in a fixed deposit account for a period of four years. The amount of interest accruing be paid to the petitioner on a quarterly basis. It would also be open for the petitioner to approach the court for release of the amount of Rs.6 lakhs, if required for purposes such as higher education or in an emergency. The capital amount be released to the petitioner after the expiry of period of four years.

Petition stands allowed in above terms.

November 10, 2006

SD./-
MANMOHAN SARIN, J.


IQAC COORDINATOR
Karnataka State Law University
Hubballi-25.


Registrar
Karnataka State Law University
Navanagar, Hubballi-580 025.