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

Judgment reserved on: 13.08.2026
Judgment pronounced on: 18.11.2026

\+ **W.P.(C) 284/2016**

SHEKH HUSSAIN @ LEKHMUDDIN .....Petitioner

Through: Mr. Siddharth, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ORS .....Respondents

Through: Mr. Vaibhav Agnihotri, ASC with Mr. Vidit Pratap Singh, Mr. Ankit Singh, Advs. for Rl/ DDA
Dr. Monika Arora, Mr. Subhrdeep Saha, Ms. Anamika Thakur, Mr. Abhinav Verma, Mr. Aradhya, Mr. Bhasker, Advs. for MCD

\+ **W.P.(C) 317/2016**

KALYANI .....Petitioner

Through: Mr. Siddharth, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ORS .....Respondents

Signed By:ANSH SRIVASTAVA
Signing Date:18.11.2026 19:04

Through: Mr. Vaibhav Agnihotri, ASC with Mr. Vidit Pratap Singh, Mr. Ankit Singh, Advs. for Rl/ DDA

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. By way of these writ petitions, the petitioners have approached this Court seeking directions against the respondents for payment of damages/compensation, along with interest and cost of litigation, on account of loss of life of Master Robiyal (W.P.(C) 284/2016) and Master Arjun (W.P.(C) 317/2016) in an unfortunate incident that occurred on 16.04.2010, wherein as a result of gross negligence on the part of respondent Nos. 1-3, both of them lost their lives after slipping into an open sewer/manhole.

FACTUAL MATRIX AS PER THE PETITIONERS

2. The petitioner in W.P. (C) 284/2016 is the father of Master Robiyal (aged about 11 and a half years at the time of the incident) and the petitioner in W.P. (C) 317/2016 is the mother of Master Arjun (aged about 12 years and 9 months at the time of the incident). Master Robiyal and Master Arjun lost their precious lives on 16.04.2010 by slipping into an open sewer/manhole situated at SU Block, DDA Park, near Double Tanki, Pitampura, Delhi ***("Park")***.

3. The Park was maintained by the respondent No. 1, i.e., Delhi Development Authority and the sewer work was being undertaken by the respondent Nos. 2 and 3 namely, Delhi Jal Board and Municipal

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Corporation of Delhi. Respondent No. 4 is the Investigating officer responsible for the investigation into the incident, working directly under the supervision of respondent No. 5, i.e., Commissioner of Police. Further, respondent No. 6 is the Ministry of Home Affairs through its Secretary.

4. On 16.04.2010, a PCR at PS-Maurya Enclave received a call *vide* DD No. 42B informing the police about the incident and FIR bearing No. 142/2010 was registered.

5. Sub-Inspector Surendra Kumar, predecessor of the respondent No. 4/Investigating officer, addressed a request dated 26.04.2010 to the respondent No. 3 i.e., Chief Engineer, MCD Rohini Zone, Delhi, *vide* letter bearing No. 1582/SHO/ME, seeking information regarding liability for the open sewer/manhole and requesting the department to cover the hole of the sewer at the park.

6. In response to the said letter, the respondent No. 3 stated that the open sewer/manhole in the Park is not falling within their jurisdiction.

7. Similar communications were also made by the respondent No. 4 to the respondent No. 2/DJB, who denied their liability on the same ground that the Park does not fall within their jurisdiction.

8. On 30.08.2010, a notice under Section 91 of the Code of Criminal Procedure, 1973, ***("CrPC")*** was issued by respondent No. 4 to the respondent No. 1 seeking answers to the seven questions in relation to the open sewer/manhole in the Park. The said notice also specified that both DJB and MCD have denied their liability on the ground of the Park not falling within their jurisdiction.

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9. On 28.01.2011, a notice under Section 91 of CrPC was also issued by the respondent No. 4 to the respondent No. 2 seeking information regarding the open sewer/manhole in the Park.

10. Another notice under Section 91 was issued by the respondent No. 4 on 02.02.2011, to the respondent No. 2/DJB seeking answer to some queries pertaining to the open sewer/manhole in the Park.

11. In response to the said notice, respondent No. 2 *vide* its reply dated 22.06.2011 stated that *"the site of accident is not an open manhole, this is a RCC structure of chamber with raised wall of 4-5 feet…"*. The said reply was contrary to the statement of PW-Shri Niwas (E&M), SDM IX, Rithala.

12. On 31.01.2015, the petitioners moved an application calling for a status report from the police department regarding the action taken pursuant to the registered FIR. In response to this application, the petitioners came to know that the police department had already filed its cancellation report.

13. On 15.04.2015, the petitioners through their counsel addressed demand notices under Section 80 of CPC by way of registered AD to the respondent Nos. 1, 2, 4 and 6 seeking Rs. 10,00,000/- as compensation.

14. After dispatch of the said notice, a person approached the petitioners offering financial help of Rs. 1,00,000/- which was declined by them.

15. Respondent No. 6 in its reply dated 30.04.2015 to the said notice, while forwarding the notices to respondent Nos. 1 and 2, informed the petitioners that it has no role in these cases and had been impleaded unnecessarily.

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16. Since no action has been taken by any of the respondents to address the grievance of the petitioners, the present petitions have been filed.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

17. Mr. Siddharth, learned counsel for the petitioners, states that the children of the petitioners lost their precious lives due to gross negligence and patent violation of law on the part of officials of the respondents, which makes the respondents vicariously liable for gross negligence.

18. He also submits that the petitioners are the legal heirs of their children and they are severely affected by the pain, agony, mental torture and shock due to the untimely death of their sons.

19. The children of the petitioners lost their lives untimely only because of negligence attributable to the officials of the respondents and their blatant disregard for the safety norms.

20. He has also placed reliance on the judgment of *A.S. Mittal v. State of U.P.*[1] to submit that in cases where safety norms are violated by the state or any person acting on its behalf, compensatory relief can be granted under writ jurisdiction. Reliance is also placed on the judgment of *Bhim Singh v. State of J & K*[2], *Lata Wadhwa v. State of Bihar*[3], *DDA v. Bhagwan.*[4].

Quantum of Compensation

[1] (1989) 3 SCC 223.
[2] (1985) 4 SCC 677.
[3] (2001) 8 SCC 197.
[4] 2013 SCC OnLine Del 6521.

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21. Lastly, learned counsel for the petitioners has placed reliance on the judgment of *Chob Singh v. State (NCT of Delhi)*[5], *State of H.P. v. Naval Kumar*[6] and *Rajesh v. Delhi Jal Board*[7] in support of the calculation for the following quantum of compensation:

Head	**Amount**
Income	Rs. 3,60,000/- p.a.
Future prospects (@ 50%)	Rs. 1,80,000/-
Deduction towards personal expenses (25%)	(-) Rs. 1,35,000/-
Annual loss of dependency	Rs. 4,05,000/-
Multiplier of 15	Rs. 60,75,000/-
Standard damages (loss of companionship, amenities and happiness)	Rs. 10,00,000/-
Total	Rs. 70,75,000/-

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1/DDA

22. At the outset, Mr. Agnihotri, learned counsel on behalf of the respondent No. 1/DDA, objects to the maintainability of the present petition and submits that the compensation as sought by the petitioners should be adjudicated by way of a civil suit and the writ jurisdiction of this Court is wrongly invoked by the petitioner.

23. He further submits that even though the Park falls under the jurisdiction of DDA, the civil work was being executed under the supervision of respondent No. 2, thus, no negligence can be attributed to the respondent No. 1.

[5] 2012 SCC OnLine Del 1983.
[6] (2017) 3 SCC 115.
[7] 2018 SCC OnLine Del 7497.

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24. It was solely the responsibility of the agency undertaking civil works i.e., the respondent Nos. 2 and 3 to adopt safety measures in accordance with law.

25. He has also denied receipt of any demand notice issued under Section 80 of CPC.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 2/DJB

26. Learned Counsel for the respondent No. 2/DJB objects to the maintainability of the present petition on the ground that the matter involves disputed questions of facts, which cannot be decided under writ jurisdiction. Reliance is placed on *SDO, Grid Corpn. of Orissa Ltd. v. Timudu Oram.*[8]

27. It is also submitted that the open sewer/manhole situated in the Park was duly protected by the RCC walls of about 4 to 5 feet in height, thus, no negligence can be attributed to the respondent No. 2.

28. The Investigating Officer has duly carried out the investigation in order to prove negligence on part of the respondent No. 2 and has thereafter filed a cancellation report, which could only have been filed by the officer when there is no proven negligence on part of the respondent No. 2.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 3/MCD

29. Dr. Arora, learned counsel for the respondent No. 3/MCD, submits that the Park falls within the jurisdiction of the respondent No. 1/DDA and

[8] 2005(6) SCC 156.

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is exclusively maintained by it, thus, the respondent No. 3 had no role in the control of maintenance activities in this Park.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 4 AND 5

30. Learned counsel for the respondent Nos. 4 and 5 submits that the respondent Nos. 4 and 5 are not necessary parties as the petitioners have sought compensation/damages from the respondent Nos. 1-3.

31. It is further submitted that the petitioners have not only concealed material facts but have also made wrong averments.

32. On 16.04.2010, information was received from the PCR that two children had fallen in the water tank at the Park, upon receipt of which SI Surendra Kumar reached the spot and the children were found lying in the sewer. They were then sent to BSA Hospital.

33. Both the children were declared dead in the hospital and an FIR No. 142/10 was registered under Section 304A of the Indian Penal Code, 1860.

34. During the course of investigation, the respondent No. 4 recorded statements of witnesses, collected evidence, and issued notices to the respondent Nos. 1-3, in order to ascertain the authority responsible for maintenance of the sewer and negligence by the authority in performing its duties.

35. At the time of investigation, the respondent No. 2/DJB informed that it had taken all precautionary measures and the site of the accident was duly protected by a 4-5 feet high wall, thus, leaving no scope for the children to accidentally fall into it.

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36. Since no negligence was found on part of the other respondents during the investigation, a cancellation report was prepared and the same was duly accepted by the learned ACMM, Rohini Courts, Delhi on 05.08.2013.

37. In any case, the petitioners cannot be allowed to challenge the cancellation report and its acceptance without following the appropriate mechanism as the same cannot be done in these proceedings.

38. The allegation that the cancellation report was prepared in collusion with the respondents is absolutely denied as the report was based on evidence and material collected during investigation.

39. Lastly, reliance is placed on the judgment of *Radhey Shyam v. State (NCT of Delhi)*[9], to state that the Court in the circumstances of that case held the principle of *res ipsa loquitur* to be inapplicable and emphasized upon the need to establish negligence on part of the respondent in order to claim any compensation.

REJOINDER SUBMISSIONS

40. Mr. Siddharth, learned counsel, by placing reliance on paragraph No. 1 of the counter affidavit filed by the respondent No. 1, submits that the respondent No. 1/DDA has admitted the fact that although the Park falls under its jurisdiction, the civil work was being executed under the supervision and control of the respondent No. 2/DJB. Respondent No. 1 has also in paragraph No. 11 of its counter affidavit clearly stated that it was the liability of the respondent No. 2 to adopt the safety measures.

41. Respondent No. 2/DJB on the other hand, has filed a vague reply without controverting the factual averments made by the petitioner. It

[9] 2015 SCC OnLine Del 8730.

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has neither placed any documentary evidence in support of its contentions nor disputed the occurrence of the incident or factum of death of the children by falling into the open sewer/manhole.

42. He further states that the respondent No. 3 has also filed a reply vague in its nature without denying the facts and without supporting documents. In paragraph No. 3 of the reply, respondent No. 3 has denied its role in control of the maintenance of the Park, as it is stated to be under the sole control and jurisdiction of the respondent No. 1/DDA.

43. Learned counsel for the petitioners states that the Park was a general park open to the public and the respondents owed a duty of care to the general public to maintain it. It is also stated that the sewer/manhole was open/uncovered, thereby attracting the principle of strict liability, and making respondent Nos. 1, 2 and 3 liable to compensate the petitioners.

44. The Hon'ble Supreme Court in the judgment of *MCD v. Subhagwanti*[10] applied the principle of strict liability in awarding compensation to the victim by holding that as per the principle of *res ipsa loquitur* the fact that a clock tower fell on the victim itself raises an inference of negligence to establish a *prima facie* case.

45. Reliance is also placed on *Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.*[11], *Santu Ram v. State*[12], *Ishiqa @ Yashika v. State of Haryana and Ors.*[13], and *Union of India v.*

[10] 1966 SCC OnLine SC 22.
[11] (1977) 2 SCC 745.
[12] 2012 SCC OnLine Del 748.
[13] CWP No. 20325/2018(O&M), Punjab and Haryana High Court.

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Prabhakaran Vijaya Kumar[14], in order to support the application of the principles of strict liability and *res ipsa loquitur* on the factual matrix of the present case.

ANALYSIS AND FINDINGS

46. I have heard the learned counsels for the parties and perused the documents placed on record.

WHETHER THE PRESENT PETITION IS MAINTAINABLE ?

47. The respondents have objected to the maintainability of the present writ petitions on the ground that there are disputed questions of facts which cannot be ascertained by this Court under its writ jurisdiction and the same form a matter of trial to be adjudicated by way of civil suits.

48. The law *qua* maintainability of writ petitions in such cases where disputed questions of facts are alleged to be involved, has been expounded by the Courts time and again and the same is no longer *res integra.*

49. Generally, it is a rule of prudence to refrain from awarding compensation under writ jurisdiction as it is primarily the domain of civil law, however, it is not an inviolable rule when the foundational/material facts are undisputed.

50. Whenever in such cases the material/foundational facts are undisputed and negligence is evident on the face of it, the alleged existence of disputed questions of facts or presence of alternate remedy will not bar the amenability of the matter to writ jurisdiction. The same has also been held by a Coordinate Bench of this Court in the judgment of

[14] (2008) 9 SCC 527.

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Mohd. Neejam and Anr. v. The State, Govt. of NCT of Delhi and Ors.[15] and the relevant paragraphs of the same read as under:

> *"30**. In this regard, it is to be noted that the aspect of disputed questions of facts does not take away the jurisdiction of this Court to entertain a writ petition, in cases where the material and foundational facts of the case are undisputed.** Further, only because there exists an alternate remedy to a party, does not obligate a writ court to not exercise its jurisdiction. It is for this Court to decide that if the material/foundational facts are not disputed, then the Court can exercise its jurisdiction under Article 226 of the Constitution.*
>
> *31. Thus, the Supreme Court in the case of A.P. Electrical Equipment Corporation v. Tahsildar, 2025 SCC OnLine SC 447, has held that mere existence of disputed questions of fact, does not take away the jurisdiction of High Court under Article 226 of the Constitution. Thus, it was held as under:*
>
> > *"xxx xxx xxx*
> >
> > *48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the*

[15] 2026 SCC OnLine Del 5492.

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rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible Rule of Law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.

50. In the aforesaid context, we may look into the decision of this Court in the case of State of Orissa v. Dr. (Miss) Binapani Dei, 1967 SCC OnLine SC 15 : AIR 1967 SC 1269. In para 6 at p. 1270 of the said judgment, this Court has been pleased to hold as follows:—

"Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined. The High Court may in

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appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court."

(Emphasis supplied)

51. This Court in the case of Gunwant Kaur v. Bhatinda Municipality, (1969) 3 SCC 769 : AIR 1970 SC 802 observed as follows:—

"The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Art. 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Art. 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such

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that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."

(Emphasis supplied)

52. In one of the recent pronouncements of this Court in State of U.P. v. Ehsan, 2023 INSC 906, this Court observed that:—

"28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion……

xxx xxx xxx"

(Emphasis Supplied)

32. Likewise, the Supreme Court in the case of Tamil Nadu Electricity Board v. Sumathi, (2000) 4 SCC 543, has held that when there is negligence on the face of it and infringement of Article 21 of the Constitution is there, in relation to disputed questions of facts, it cannot be said that there is a bar for remedy under Article 226 of the Constitution*. Thus, the Supreme Court held as follows:*

"xxx xxx xxx

10. In view of the clear proposition of law laid by this Court in Sukamani Das case [(1999) 7 SCC 298] ***when a disputed question of fact arises and there is clear***

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denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution*. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey [(1999) 1 SCC 741 : 1999 SCC (L&S) 389] where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. This Court then observed : (SCC pp. 758-59, para 27)*

"[I]t may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does

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not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. 'Person' under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations

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have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial 'bull in a china shop' in the exercise of its jurisdiction under Article 226."

xxx xxx xxx"

(Emphasis Supplied)

*34. Accordingly, despite there being inter se disputed questions of facts between the respondents, this Court, to satisfy the maintainability of the petition, has to look at the foundational facts that are material**. When material facts are not disputed and a case can be made out with the facts on record, a petition is maintainable under Article 226 of the Constitution.***

(Emphasis Supplied)

51. In the present case, the following foundational/material facts remain undisputed:

A. Two children namely Master Robiyal and Master Arjun, lost their lives on 16.04.2010.

B. The unfortunate incident occurred at a Park.

C. The Park falls under the jurisdiction of the respondent No. 1/DDA.

D. The relevant civil work concerning open sewer/manhole was being done by the respondent No. 2/DJB.

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E. The children fell in the open sewer/manhole and consequently lost their lives.

F. The writ petition has been pending in this Court since 2016.

52. It is settled and also reiterated by the judgment of this Court in the case of ***Shagufta Ali v. GNCTD & Ors.***[16] that although the Court should refrain from awarding compensation under writ jurisdiction as the same is essentially a remedy in the civil domain but that applies only when there are disputed questions of facts and not when the liability of State for the wrongful act is undisputed. In such cases the absence of proof of attribution of liability to State cannot be a ground of defence as long as reasonable inference can be drawn with respect to the same. The doctrine of *res ipsa loquitur* can be applied by the Courts. The relevant paragraph of ***Shagufta Ali (Supra)*** reads as under:

> *"43. Upon consideration of the aforementioned judicial precedents, it is evident that the High Court, ordinarily while exercising its jurisdiction under Article 226 of the Constitution of India, should refrain from awarding compensation, a remedy primarily available within the civil law domain, when the case involves disputed questions of fact. However, if the State's liability for a tortuous act, committed by itself or its servants, is undisputed, the maxim res ipsa loquitur may be applied to overcome any factual controversy. The absence of concrete proof does not preclude the claimant from recovering compensation, provided a reasonable inference can be drawn from the*

[16] Judgment pronounced on 05.09.2024, W.P.(C) No. 4291/2020, Delhi High Court.

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known facts that the harm was caused by the negligence of the State or its servants. In such circumstances, the facts must enable the Court to draw an unequivocal inference and must speak for themselves."

53. In view of the aforesaid undisputed facts, it is clear that negligence is writ large on the acts of respondent Nos. 1 and 2. The respondent Nos. 1 and 2 being public authorities performing public functions owe a duty of care and responsibility to the citizens of this Country. The subject Park is a public park and all citizens have a right to visit the park and corollary to the said right of citizens of Delhi, the respondent Nos. 1 and 2 are under an obligation to ensure the visitors are safe during their visits.

54. The sewer maintenance work being carried out without taking adequate care and precautions, which is reasonably expected from respondent Nos. 1 and 2, has resulted in the death of two children aged about 11 and 12 years respectively.

55. The very fact that the death occurred due to the children falling in the sewer shows that the care, responsibility and precaution required of respondent Nos. 1 and 2 were inadequate and deficient. The principle of *res ipsa loquitur*, hence, is squarely applicable to the above said facts.

56. The judgment of ***SDO, Grid Corpn. of Orissa Ltd. (Supra)*** relied upon by the respondent No. 2/DJB to state that the petition in view of the disputed questions of facts is not maintainable, also does not advance the case of the respondent No. 2. The said judgment pertains to cases of persons coming in contact with wires of electric transmission lines. In

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the said judgment, the Hon'ble Supreme Court relied upon ***Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das***[17], to hold that the High Court failed to record finding of negligence in its judgments and the same could not have been decided on the basis of affidavits only. In the present case, the foundational facts remain undisputed. The relevant paragraphs of ***SDO, Grid Corpn. of Orissa Ltd. (Supra)*** read as under:

> *"6. In Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) [(1999) 7 SCC 298] with which case these appeals were listed for hearing but could not be heard for want of service, this Court took the view that the High Court committed an error in entertaining the writ petitions under Article 226 of the Constitution and were not fit cases for exercising the jurisdiction under Article 226 of the Constitution. It was held that actions in tort and negligence were required to be established initially by the claimants. The mere fact that the wire of electric transmission line belonging to the appellants had snapped and the deceased had come into contact with it and died by itself was not sufficient for awarding compensation. The Court was required to examine as to whether the wire had snapped as a result of any negligence on the part of the appellants, as a result of which the deceased had come in contact with the wire. In view of the defence raised and the denial by the appellants in each of the cases, the appellants deserved an opportunity*

[17] (1999) 7 SCC 298.

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to prove that proper care and precautions were taken in maintaining the transmission line and yet the wires had snapped because of the circumstances beyond their control or unauthorised intervention of third parties. Such disputed questions of fact could not be decided in exercise of jurisdiction under Article 226 of the Constitution. That the High Court could not come to the conclusion that the defence raised by the appellants had been raised only for the sake of it and there was no substance in it. In para 6 it was observed thus: (SCC pp. 301-02)

> *"6. In our opinion, 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 actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding*

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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 in contact with the wire. In view of the specific defences 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 unauthorised 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. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995."

9. In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that GRIDCO was in any way negligent in the performance of its duty. The present case is squarely

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covered by the decision of this Court in Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) [(1999) 7 SCC 298] . The High Court has also erred in awarding compensation in Civil Appeal No. 4552 of 2005 [@ SLP (C) No. 9788 of 1998]. The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 of the Constitution cannot be justified."

57. The aforesaid judgment is distinguishable from the present cases on the ground that the Hon'ble Supreme Court primarily interfered because the impugned judgments were passed in the absence of any finding by the High Court that the electricity department was guilty of "negligence".

58. Additionally, the unfortunate incident occurred on 16.04.2010, pursuant thereto the parents of the children filed the writ petitions in the year 2016 and after completion of pleadings the same have been pending in this Court for more than 10 years. In this view of the matter the decision to relegate the parties to civil suit remedy would be a travesty of justice. Hence, for the said reasons, the petition is entertainable and is being entertained.

WHETHER THERE IS ANY NEGLIGENCE ON THE PART OF THE RESPONDENTS ?

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59. The next question is whether there has been negligence attributable to any/all of the respondents in their conduct i.e., essentially a breach of duty of due care by the respondents.

60. It is the case of the petitioners that the respondent authorities responsible for maintaining the Park have failed in their duty to take safety and precautionary measures leading to the untimely demise of two children.

61. *Per contra,* it is the defence of the respondent No. 2/DJB that it had taken sufficient precautionary/safety measures and the site was adequately protected.

62. The unfortunate accident leading to loss of lives of two innocent children occurred on 16.04.2010 and initially all the authorities denied their responsibility in connection with the maintenance of the park. It was only in the reply dated 22.06.2011 that the respondent No. 2/DJB acknowledged its jurisdiction and provided an explanation with regard to the open sewer/manhole by stating that the same is an RCC structure and is adequately protected by 4-5 feet walls. The letter dated 22.06.2011 reads as under:

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DELHI JAL BOARD, GOVT. OF NCT DELHI
OFFICE OF THE EXECUTIVE ENGINEER (SDW) IX
S.T.P. RITHALA: PHASE-I, ROHINI, DELHI- 110085

No.F .14/DJB/EE (SDW) IX/2011/1127 Dated 22/6/11

To,

The SHO,
Police Station Maurya Enclave
Pitampura, Delhi

Subject:- Reply to Notice No.440/SHO/ME/Dated 02.02.2011 & further reminder dated 16.04.2011.

This is in reference to the above said subject, the point wise reply of the queries is as under:-

1. The side of accident is not an open manhole, this is a RCC structure of chamber with raised wall of 4-5 feet where in sewer pipes/ rising main are terminating for onward transmission of sewage to Rithala SPS through a brick barrel. The chamber was in perfect condition & cavity was caused by settled rising main at termination point. The chamber for rising main in park of SU Block, Ptiam Pura is under the control of DJB. All precautions have been taken to deny access to the accident site, through a 4-5 feet high wall all around the site.

2. The same is regretted. The confusion was due to misunderstanding of jurisdiction of work between divisions of DJB, the pipe line is with this office and chamber with EE(NW) III office.

3. The said chamber is a RCC structure with raised wall of 4-5 feet where in sewer pipes/ rising main are terminating for onward transmission of sewage to Rithala SPS through a brick barrel. The chamber was in perfect condition & cavity was caused by settled rising main at termination point. All precautions have been taken to

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deny access to the accident site, through a 4-5 feet high wall all around the site. It is normally not possible for children to fall accidently into it as whole area is well protected with 5 Feet Height boundaries. A child cannot enter on its own or accidentally into it in normal circumstances.

4. EE (SDW) IX is responsible for the maintenance of rising mains coming to the plant. However the request for rehabilitation of Rising main has been pending with the office of EE(P) SR-I since 2003.

5. As stated above, the cavity was caused due to settlement of rising main & well protected with 5 feet boundary wall & not approachable in normal circumstances. However the whole area was further covered as an additional safety measure.

6. The work was not allocated to any agency as same was pending with the office of EE(P) SR-I.

7. Please refer reply at Point 1, 3 & 5.

8. As the whole area was well protected with 5 feet boundary wall, it is not possible to enter into it under normal circumstances; therefore preventive measures stood taken.

9. As stated in previous replies, the area was well protected with 5 feet boundary wall & not accessible in normal circumstances. There was no casualness in approach or lapse on part of any official and whatever preventive measures were required to be taken, had duly been taken.

Thanking you.

Yours truly,
Sd/-
EE (SDW) IX

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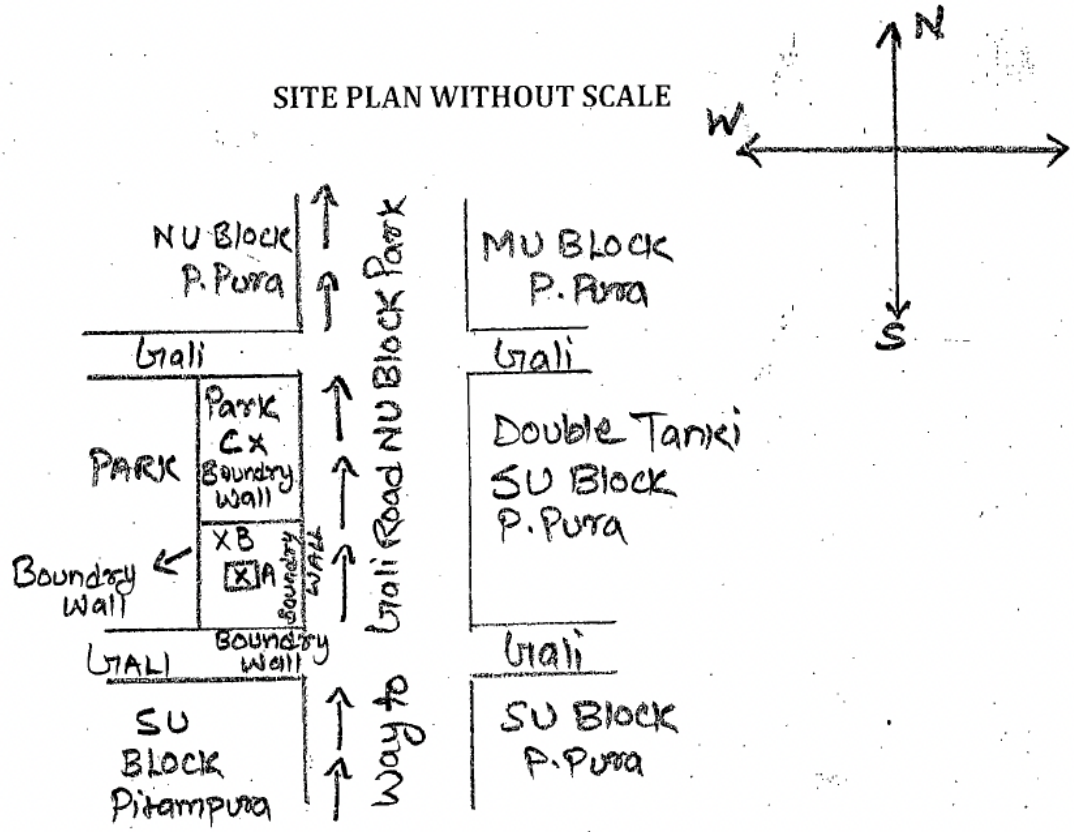
63. The only ground of defence which is put forth by the respondent No. 2/DJB is the construction of 4-5 feet walls surrounding the open sewer/manhole and the same was considered substantial compliance with precautionary measures required to be adopted by the respondent No. 2.

64. The said submission is also supported by the site plans prepared by the Investigating officer and the same are reproduced as under:

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Case FIR No.142/10 Dt. 17/4/10 U/S 304A IPC P.S. M. Enclave

SITE PLAN WITHOUT SCALE



Note: Mark 'A' in the Site Plan is the place from where the Sewer Water reserves and flows.

Mark 'B' in the Site Plan is the place where Boundary Wall situated and permanently constructed.

Mark 'C' is the place where Park situated.

Adv.
True Copy

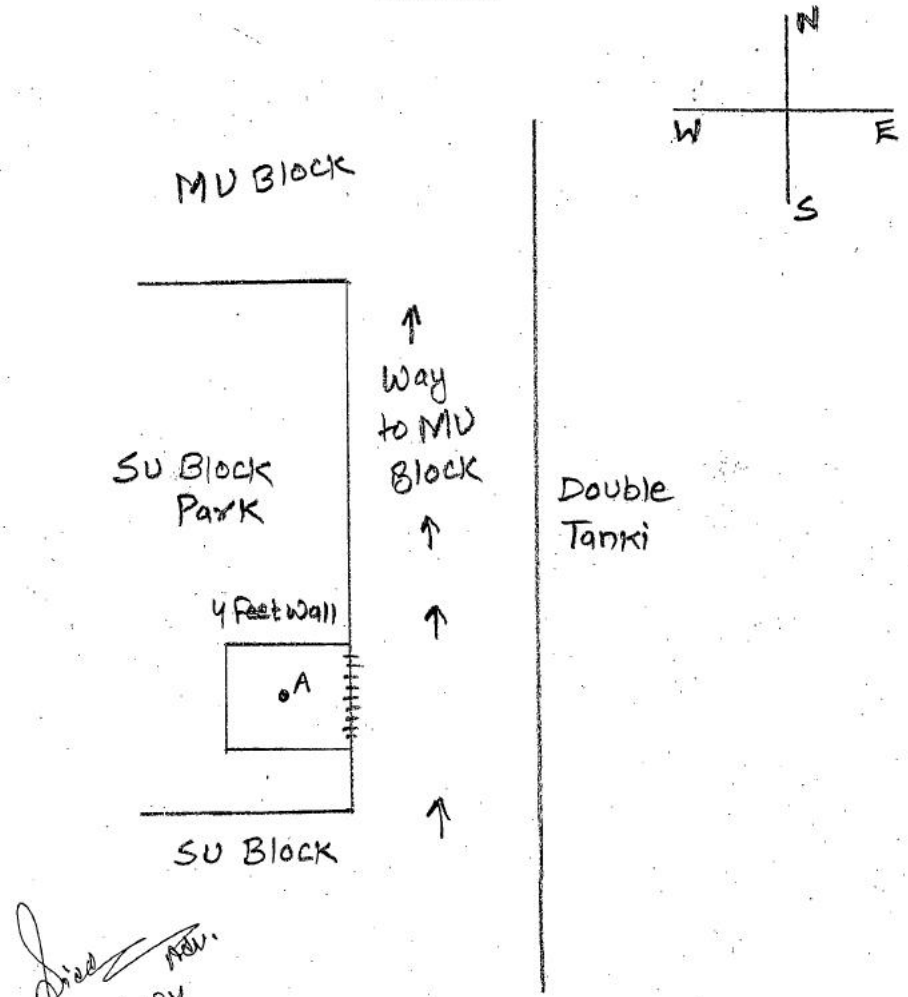
Sd/-
SI SURENDER KUMAR
P.S. Maurya Enclave
Dt. 17/4/10

Signed By:ANSH SRIVASTAVA
Signing Date:18.11.2026 19:04

INNER CASE DIARY

Case FIR No.142/10 Date 17/4/10 U/S 304A P.S. Maurya Enclave

SITE PLAN



Dised Actv.
True Copy

Note: Mark A is the place in Site Plan where the children were found unconscious in the Sewer Hole.

Sd/-
SI Surender Kr.
D-2819
P.S. Maurya Enclave
17-4-10

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65. Even for the sake of argument if it is accepted that the open sewer/manhole was protected by a 4-5 feet wall, the same cannot be a defence to show that proper care and caution was adopted by the respondent No. 2/DJB. When any open sewer/manhole is situated in a public park, the maintaining authority owes a greater duty of care than required in ordinary cases. In the subject Park which was open to the public for visitation and recreation, children of young age (11/12 years) cannot be presumed to possess the foresight/prudence of an adult to anticipate the hidden dangers which are behind 4-5 feet walls. Children often perceive inadequately secured pits/areas as curious spaces and not as lethal dangers because owing to their age they lack foresight to protect themselves and they cannot be blamed for the same.

66. It was incumbent upon the responsible authority (respondent No. 2) to make sure the Park was protected from all kind of untoward incidents, which they have failed to ensure.

67. Additionally, as the park fell under the jurisdiction of the respondent No. 1, it also owed a duty/obligation to every visitor of the Park (including children) to ensure a safe, congenial and hazard free environment, which it failed to discharge. Thus, the respondent No. 1/DDA cannot be allowed to contend that since the work was being carried out by the respondent No. 2, it was not responsible in any way or manner. Respondent No. 1/DDA cannot be absolved of its vicarious obligation, as it was the primary agency/authority under whose jurisdiction the Park was situated and it was responsible to ensure that there were no lapses in maintaining safety of the Park area.

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68. In ***Pravesh Kumar v. Delhi Jal Board***[18]**,** which is a case based on somewhat similar facts, a 9 year old child died because of falling into a pit and the same was held to be a dereliction of duty on the part of DJB despite its defence being that it erected a wall as a precautionary measure which was broken by the local residents to get illegal access to the ground, thereby, allowing the child to enter the ground.

69. In ***Pravesh Kumar (Supra),*** this Court discussed the application of the maxim *res ipsa loquitur* in terms of ***Shagufta Ali (Supra)*** and observed as under:

> *"23. In Shagufta Ali, the Court, while referring to the enunciation of law in various judicial precedents,* ***laid down the essential conditions for the applicability of the legal maxim res ipsa loquitur in exercise of its discretionary powers under Article 226 of the Constitution of India to grant compensation. It was categorically held that when the State instrumentalities are directly and solely responsible for an incident, and the cause and fact of death are undisputed, the maxim res ipsa loquitur would be applicable. This principle allows for the presumption of negligence, strictly based on the facts of each case.***
>
> *24. This Court in the case of Munna reiterated the findings in Shagufta Ali and held that it is a settled law that where the negligence and breach of duty by the State are writ large and duty of care is found to be specifically of the public authorities, the maxim res ipsa loquitur shall apply. When the State is under a statutory duty of care and fails to fulfil such duty, the presumption of liability without proof will also be attracted . .."*

[18] 2024 SCC OnLine Del 8158.

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70. The decision of a Coordinate Bench of this Court in ***Pravesh Kumar (Supra),*** was challenged by both the parties. The appeal preferred by the one of respondents/DJB was dismissed by the Hon'ble Division Bench and the said Order of dismissal dated 23.04.2025[19] was upheld by the Hon'ble Supreme Court[20]. In the appeal preferred by the petitioner, the judgment of the learned Single Judge was partly modified by the Hon'ble Division Bench[21] only to the extent of the quantum of compensation.

71. From a conspectus of the aforesaid judicial pronouncements and the facts of the present case, it is clear that the application of the maxim *res ipsa loquitur* (the thing speaks for itself) is squarely attracted. The fact of death of the children is undisputed and the cause of the death, i.e., by falling into the open sewer/manhole is also undisputed. Now, by application of the principle of *res ipsa loquitur* the onus of proof shifted to the respondents to dislodge the presumption of negligence existing against them.

72. The only ground of defence raised by the respondent No. 2/DJB in its favour that it had erected a wall surrounding the open sewer/manhole also does not advance its case. It was the authority responsible for not covering the open sewer/manhole which has led to the death of two children. It owed a greater duty of care in case of a Park which was open to public. Hence, there is a dereliction of duty on part of the respondent No. 2/DJB and it is liable for gross negligence resulting in death of Master Robiyal and Master Arjun.

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[19] LPA No. 266/2025, Delhi High Court.
[20] Order dated 11.08.2025, SLP(Civil)Diary No.31574/2025.
[21] Pravesh Kumar v. Delhi Jal Board, 2026 SCC OnLine Del 4356.

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73. Another contention raised by the respondent No. 2/DJB is that the investigating authority has filed a cancellation report with respect to the FIR lodged against the respondents, and the same proves that the respondent No. 2 has not been negligent in its conduct.

74. The aforesaid contention lacks merit and is baseless because the standard of proof and the nature of inquiry undertaken for the purpose of awarding compensation in case of tortious liability of state instrumentality is different from the nature of investigation and its conclusion drawn by the investigating authorities in criminal proceedings, as the present proceeding is founded on violation of the core fundamental right to life under Article 21 of the Constitution of India.

75. Also, the cancellation report is entirely based on the premise that there had been carelessness on part of the children and the entry of the children into that area after jumping the walls was itself illegal.

76. The findings recorded in the cancellation report even though immaterial for the purpose of adjudication of the present matter relating to the award of compensation, the same to my mind are also entirely absurd.

77. I am of the view that children of tender age playing in a park cannot be attributed with carelessness when there are dangerous structures left open around them by the authority responsible to take every safety and precautionary measure to prevent loss of life and limb. The cancellation report filed by the police stands on a different footing altogether and does not inspire my confidence to rule in favour of the respondent No. 2.

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78. In any case, the respondent No.2/DJB has not disputed that the sewer/manhole was uncovered at the relevant time and since it was the respondent No. 2 who owed a greater duty of care (having reference to the site being a general public park), respondent No. 2/DJB has been grossly negligent in its conduct resulting in the death of two innocent children.

79. Similarly, respondent No. 1/DDA, is the authority under whose jurisdiction the Park is situated. Respondent No. 1/DDA has raised two fold objections, first regarding the maintainability of the petition (which has already been adjudicated) and second regarding its liability as respondent No. 2/DJB was the authority responsible for civil works being undertaken in the Park and respondent No. 1/DDA has no role in the same.

80. Once, for the aforesaid reasons, it is undisputed that the children died because of falling into the open sewer/manhole situated in the Park and the principle of *res ipsa loquitur* is squarely attracted, it was upon the respondent No. 1/DDA to prove that it had adopted proper safeguards and precautionary measures. Mere denial of liability on the ground that it had no role to play in civil works cannot be countenanced.

81. The respondent No. 1/DDA was the authority under whose jurisdiction the Park was situated and it was incumbent upon it to maintain the Park with adequate safeguards to protect the visitors. It was within the knowledge of the respondent No. 1/DDA that the general public including children visit the Park and it might result in some untoward incident. The very fact that the Park was kept open for general public visitation and recreational purposes gives rise to a presumption that the

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same is safe and free from any form of hazard let alone an open sewer/manhole.

82. Even though the respondent No. 1/DDA was not concerned with the civil works and the same was being undertaken by the respondent No. 2/DJB, it cannot be said that it had no duty of due care towards the visitors visiting the Park including the children who lost their lives on 16.04.2010. The respondent No. 1/DDA has failed in performing its public duty and taking reasonable precautionary measures towards the safety hazards existing in the Park. It was bound to ensure that if the Park is open for general public's visitation then the same is kept in a safe and secure condition so that a person of general prudence including children who lack reasonable foresight of an adult are kept safe from any safety hazard including the open sewer/manhole as it was in the present case.

83. The inter se dispute between respondent No. 1/DDA and respondent No. 2/DJB, cannot be an impediment for adjudication of the present matter and award of compensation.

84. Accordingly, the respondent No. 1/DDA is also found negligent and is liable to compensate the petitioners for the death of Master Robiyal and Master Arjun.

QUANTUM OF COMPENSATION

85. The petitioners initially sought compensation of Rs. 10,00,000/- each, however, the petitioners have updated their claim for compensation to Rs. 70,75,000/- each by way of written submissions. Reliance is placed on ***Naval Kumar (Supra)*** and ***Rajesh (Supra)***, to substantiate the said updated quantum of compensation.

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86. In the case of ***Naval Kumar v. State of H.P.***[22]***,*** the Hon'ble Division Bench of the High Court of Himachal Pradesh awarded a compensation of Rs. 1.25 crores under different heads including loss of companionship, happiness, mental distress, etc. and based on assumption of the petitioner's expected income to the tune of Rs. 30,000/- per month. The said judgment was then partly modified by the Hon'ble Supreme Court in ***Naval Kumar (Supra)*** to reduce the awarded amount from Rs. 1.25 crores to Rs. 90 lacs. The relevant paragraphs of the judgment of Hon'ble Supreme Court in ***Naval Kumar (Supra)*** read as under:

> *"14. The High Court held and, in our view, rightly that the incident in question occurred due to the negligence of the State and its authorities and hence, the State was vicariously liable to compensate the respondent for the losses sustained by the respondent. It may be mentioned that the State rightly did not challenge this finding and hence, we need not go into its correctness. The High Court further held and, in our view, rightly that having regard to the family background of the respondent and further respondent's excellent performance as a brilliant student in studies, he would have easily earned Rs 30,000 per month in his life. We find no good ground to interfere in this finding of fact, which, in our opinion, is based on proper material on record.*

[22] 2015 SCC OnLine HP 731.

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15. The High Court, however, further awarded Rs 10,00,000 towards loss of companionship, life amenities/pleasures and happiness, Rs 10,00,000 for pain and suffering, mental distress, trauma and discomfort and inconvenience, Rs 10,00,000 towards attendant/nursing expenses, and lastly, Rs 5,00,000 for securing artificial/robotic limbs and future medical expenses. In our considered view, the award of compensation under these four heads appears to be on very higher side and is not supported by any evidence. It is, in our view, based on assumptions and presumptions to which we do not concur. In our view, entitlement under these heads is one thing and the quantum of grant of compensation under these heads is another thing. In this case, as rightly urged by the learned counsel for the appellant State that lump sum award of compensation under these heads is on higher side and is not supported by any evidence. It is, therefore, not legally sustainable.

16. In our considered view, taking into consideration the facts and circumstances of the case such as the respondent's family background, his age (8 years), ***nature of permanent disability suffered by the respondent, his performance in studies, the determination of monthly/yearly income made by the High Court, expenses incurred and all the relevant factors, which are usually taken into account in awarding compensation to the victim****, the respondent is held entitled for a total lump sum compensation of Rs 90,00,000*

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(Rs ninety lakhs) together with interest payable @ 6% p.a. in place of Rs 1,25,00,000 awarded by the High Court.

17. The award of Rs 90,00,000 together with interest payable @ 6% p.a., in our view, would fetch sufficient regular monthly income to the respondent by way of interest alone, if the awarded sum is deposited in the bank and would thus take care of the respondent's upbringing and other needs for the rest of his life. The award of compensation determined by us is just and reasonable compensation payable to the respondent."

87. The said judgment is distinguishable on facts. In the case of ***Naval Kumar (Supra),*** the child namely Naval Kumar was electrocuted with a high tension live wire leading to 100% permanent disability and dependency upon his family members for his entire life. The High Court of Himachal Pradesh while assuming his expected monthly income had referred to the fact that the child was a *"brilliant student"* and he would normally have started earning monthly salary of Rs. 30,000/- after attaining the age of 20 years. In the instant case, there is no document on record to show the education or skills of the two children. In fact as per Police status report (annexed as Annexure P-42), the two children were stated to be engaged in *"scrap collection"*.

88. The law with regards to quantification of compensation has been discussed by a Coordinate Bench of this Court in a similar case of ***Pravesh Kumar (Supra)*** and the same reads as under:

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"42. A Coordinate Bench of this Court in Varinder Prasad was considering a case of compensation under Article 226 of the Constitution of India for death of a ten-year-old boy, due to the falling of the chajja present in the respondent's premises. The Court, while granting compensation to the deceased's parents, calculated the amount that was payable as compensation and made the following observation:—

> *"As far as pecuniary compensation is concerned, as already explained in Kamla Devi (supra) the income of the parents can be taken as a standard measure for arriving at the expected annual income of the children. The method of calculating the compensation for pecuniary loss of dependency depends upon the potential earning capacity of the deceased Ajay Kumar, had he attained adulthood. As per the affidavit of the petitioner no. 1 dated 15.12.2011, his monthly salary at the time of this incident was Rs. 10,000. At the time of filing of the affidavit, the earnings of petitioner no. 1 were Rs. 30,000/- per month approximately. The petitioners have applied a multiplication factor of 1.5 to counter inflation and erosion of the value of money. Considering the fact that in a span of about four years, there has been a threefold increase in the earnings of petitioner no. 1 from Rs. 10,000/- p.m. to Rs. 30,000/- p.m., in my view, the multiplicand factor of 1.5, to off set the effects of*

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inflation and erosion of the value of money should be adopted. It can be assumed that Ajay Kumar would have, at least, earned what his father was earning, if not more. Therefore, the multiplicand would be the expected annual income, less what he required for himself. As Ajay would have grown up, his personal expenses would have only risen. The contribution to the household would not have exceeded half of the income. Thus the multiplicand work out to be Rs. 90,000/- i.e. (1,80,000/2). This multiplicand is to be multiplied by the multiplier of 15, in terms of the second Schedule to the Motor Vehicles Act, 1988. This comes out to be a figure of Rs. 13,50,000."

43. This Court, in the case of Kamla Devi laid down the principle for calculation of monetary compensation in cases of Constitutional torts. The above principle of quantification has been applied by this Court in subsequent decisions in Kishan Lal, Subramanium, and Varinder Prasad. The relevant paragraphs of the decision in Kamla Devi are reproduced hereunder as:—

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

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

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

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

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units excluding the two units for the deceased adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency.

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

44. Thus, taking into account the aforesaid decisions, an attempt is being made herein to compute the compensation in accordance with the principles laid down in Kamla Devi. The said determination of the amount of compensation payable to the petitioners can be made while classifying the compensation into following two heads:—

A) Standard Compensation

As per the guidelines, the standard compensation is stated to be 50,000/- in the year 1989 and is to be revised from time to time to counter inflation and the consequential erosion of the value of the Indian National Rupee and the amount needs to be updated for subsequent years on the basis of the Consumer Price Index for Industrial Workers

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(CPI-IW) brought out by the Labour Bureau, Government of India. In Kamla Devi, the (CPI-IW) with respect to the base year 1982 was 171.

As per the website and annual report of the Labour Bureau, Government of India, in July 2016 (the month when the petitioners' son died) the CPI (IW) was 280 (with respect to Base Year 2001). This number must be reworked with regard to the Base Year 1982 using the linking factor. As per the said report, the All India Linking factor between New Series of Consumer Price Index Numbers for Industrial Workers on base 2001 = 100 and the previous series on base 1982=100 (General Index) linking factor is 4.63.

Therefore, the CPI (IW) in July 2016 with respect to Base Year 1982, would be calculated as:

$$280 \times 4.63 = 1296 \text{ (approx)}$$

The standard compensation for the present case would be worked out in the following manner:

$$(50{,}000 \times 1296)/171 = 3{,}78{,}947 \text{ approx}$$

Therefore, the estimated standard compensation after rounding off is worked out to be Rs. 3,78,947/-.

<u>B) Loss of Dependency and Pecuniary Losses.</u>

As per Kamla Devi, the product of the multiplicand and the multiplier results in the figure of annual loss of dependency. The age of the deceased was nine years and the multiplier

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for it, according to the Schedule II of the Motor Vehicles Act, 1988, is 15. The multiplicand is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. Then annual income is divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member.

In Kishan Lal, while the Court relied upon Kamla Devi to calculate the standard compensation, it also opined that there is a need to adopt a different approach while calculating the pecuniary losses. It was observed that the Court in Kamla Devi was adjudicating a prayer for compensation involving an earning adult whose death had an immediate financial impact on his family, whereas, in contrast, the prayer for compensation in Kishan Lal concerns the death of a small child who was not contributing to the household income. Consequently, the Court, relying on the principles laid down in M.S. Grewal v. Deep Chand Sood[19] *evolved the following methodology for calculating compensation for the death of a minor, which reads as under:—*

> *"31. Calculating the compensation for pecuniary loss of dependency is somewhat more complicated, Whereas Kamla Devi (supra) involved an earning*

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adult whose death had an immediate financial impact on his family, the present petition involves the death of a small child who was not contributing to the household income and who would have been unable to do so for many more years. A somewhat different approach would be needed.

32. In Smt. Kumari v. State of Tamil Nadu : 1992 AC) 283, the six-year old son of the appeilant died as a result of falling in an open manhole. The appellant filed a petition under Article 226 of the Constitution seeking a writ of mandamus directing the respondents to pay Rs. 50,000/- as compensation. The Madras High Court dismissed the writ petition on the ground that in a writ petition it was not possible to determine which respondent was negligent in leaving the sewerage tank uncovered. The Supreme Court set aside the judgment of the High Court and awarded the appellant the sum of Rs. 50,000 with interest at 12% per annum from the date of the accident until the date of payment. The Supreme Court further held that the State of Tamil Nadu may take appropriate proceedings to claim the said. amount from any of the respondents who might have been responsible for leaving the manhole uncovered. Thus, one method of calculating the compensation of pecuniary loss of dependency is to bring the above compensation given in Kumari (supra)

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up to date based on India's inflation rate between 1992, when the case was decided, and 2005, when Puran died, and to subtract from it what the standard compensation would have been in 1992.

33. However, the approach in M.S. Grewal (supra) appears to be the better and more rational approach. In M.S. Grewal (supra) fourteen children drowned in a river during a school picnic as a result of the school's negligence. The Supreme Court awarded Rs. 5 lakhs to each family, partly on the basis that the school was one of the most affluent in the country and the deceased children's earning potential was significant. Therefore, the method of calculating the compensation for pecuniary loss of dependency entails the examination of Puran's potential earning capacity had he lived to adulthood. The petitioner No. 1, Puran's father, was working in a market as a Security Guard and was earning approximately Rs. 4,000/- per month. The late Puran, who was in the 3rd Standard, when he passed away, was an excellent student. In the previous academic year, he was ranked First in his class. Therefore, we can safely assume that Puran as an adult would have earned at least as much as his father, if not more. So, as evidenced by his academic skills, Puran's father's salary can be used as a starting base for calculating the compensation for pecuniary loss of

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dependency. The multiplicand would be the expected annual income less what he required for himself. Since, this expected income would only arise when Puran grew up to be an adult, it would be safe to assume that his personal expenditure would be higher. True, he would be contributing to the household, but his contribution in my view would definitely not exceed half of his income. It must be remembered that here we are concerned with compensation for pecuniary loss of depending of Puran's parents. For some stretch of time Puran's father would be earning and his dependency would not be much. Furthermore, Puran would have married and would have had to support his wife and children. So, the assumption that, in the maximum, Puran's parents would have lost only half of Puran's expected annual. income, would not, be an unreasonable one. Thus, the multiplicand would work out to Rs. 24,000/- (4000 × 12 × 1/2). The multiplicand and is to be multiplied by the multiplier of 15 as derived from the Second Schedule to the Motor Vehicles Act, 1988 in respect of victim in the age group of upto 15 years. Therefore, Puran's parents would be entitled to a sum of Rs. 3,60,000/- (24000 × 15) for compensation for pecuniary loss of dependency.

34. Accordingly, the petitioners are entitled to a total compensation of Rs. 5,13,801/-. The standard

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compensation or conventional sum being Rs. 1,53,801/- and the compensation for pecuniary loss of dependency being an amount of Rs. 3,60,000/- as computed above."

(emphasis supplied)

Therefore, adhering to the same principle as laid down in Kishan Lal, the multiplicand can be calculated by ***considering the father's monthly salary as the assumed monthly income of the deceased. This amount is multiplied by 12 to arrive at the annual income and then halved.*** *Subsequently, this multiplicand amount is multiplied by the appropriate multiplier as prescribed. In the instant case, the monthly salary of the father, as indicated in the rejoinder affidavit filed by the petitioners, is approximately Rs. 20,000. Consequently, the annual income would be Rs. 2,40,000, and the annual loss of dependency is calculated accordingly, as under:—*

(2,40,000/2) (multiplicand) × 15 (multiplier) = Rs. 18,00,000/-

The total compensation is, thus, computed to be:

18,00,000 (pecuniary loss of dependency) + 3,78,947(standard compensation) = Rs. 21,78,947/-

38. In view of the aforesaid, DJB is directed to pay a lump sum amount of Rs. 22,00,000/- alongwith simple interest at the rate of 6% per annum from the date of incident i.e., till

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the date of realisation, as compensation to the petitioners for the death of their son within a period of three months from the passing of this judgment. Any failure to comply with the aforesaid direction shall result in the petitioners being entitled for payment of additional simple interest at the rate of 10% per annum, till the payment is made."

89. From a conspectus of the aforesaid, it is clear that the Court followed the principles laid down in the case of ***Kamla Devi v. State (NCT of Delhi)***[23]**,** wherein the calculation was classified under two separate heads, namely, Standard damages and Pecuniary loss of dependency.

90. In another judgment of ***Kishan Lal v. Govt. NCT of Delhi***[24]**,** the computation of pecuniary losses was discussed in relation to a small child who was not earning at the time of his death and his expected income was assumed to be the same as that of his father and accordingly, the compensation for pecuniary loss of dependency was calculated.

91. Keeping in view the aforesaid judicial authorities and the factual matrix of the present case, the claims of the petitioners are quantified as follows:

A. <u>Standard Compensation:</u>

92. For the purpose of calculating standard compensation, the starting point/standard of Rs. 50,000/- in the year 1989 needs to be adjusted to counter inflation and the value of Indian Rupee on the basis of Consumer Price Index for Industrial Workers ***("CPI-IW")***. The CPI-

[23] 2004 SCC OnLine Del 721.
[24] 2007:DHC:692.

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IW for the year 1989 (Base 1982) as applied in the case of ***Kamla Devi (Supra)*** was 171.

93. As per the Annual Report 2010 available on the website of Labour Bureau, Ministry of Labour & Employment, Government of India, the CPI(IW) for the relevant time i.e., April, 2010 on Base 2001=100 (date of incident being 16.04.2010) is 170. The linking factor to convert CPI (IW) on the old base year of 1982=100 to relevant base year of 2001=100 is 4.63. Thus, the CPI(IW) in April, 2010 with respect to the previous base year i.e., 1982 is as follows:

$$170 \times 4.63 = 787.10$$

94. Accordingly, the standard compensation in the present case can be computed by multiplying the standard of Rs. 50,000 with the adjusted CPI(IW), i.e., (50,000 x 787.10)/171 = Rs. 2,30,147 (approx.)

B. <u>Pecuniary loss of dependency</u>

95. In the present case, there are no material facts which are brought to my notice in order to decide the quantum with respect to pecuniary loss of dependency. Additionally, there is no proof of annual income of either of the petitioners, in order to facilitate my computation of compensation by estimating annual income of the children who lost their lives in the unfortunate incident.

96. In the status report annexed as Annexure P-42 to the present petition, it is stated as under:

> *"It is submitted that on 16-04-2010 three teenage boys namely 'Sonu', 'Robial' S/o Lakhmuddin R/o C-514, Jehangirpuri aged 10 years and 'Arjun' S/o Ranjit Haldar R/o Jhuggi No.C-,44, Jehangirpuri aged 15 years from*

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Jehangir puri Delhi ***were involved in the scrap collection and two of them had slipped into a sewer main hole situated in the SU Block, DDA Park, near double Tanki, Pitampura*** *and the third boy 'Sonu' got scared and rushed to his home and returned with his parents on the spot."*

97. From a perusal of the aforesaid, it is clear that the children were involved in scrap collection from the Park. Hence, I am inclined to award compensation in the present petition on the basis of working out the minimum wages for a skilled person as applicable on the relevant date of incident, i.e., 16.04.2010. Even though the children were involved in the work of scrap collection, the same to my mind, cannot be an impediment to apply the minimum rate of wages of a skilled person for children who lost their lives at such young age of about 11 and 12 years.

98. In the case of ***Chob Singh (Supra),*** a child died because of falling into the sewer tank and with respect to pecuniary compensation it was held as under:

"26. As far as the peculiarly compensation is concerned, as already explained in Kamla Devi (supra), ***the income of the parents can be taken as a standard measure for arriving at the expected annual income of the children. In this case, the petitioner is a three wheeler auto driver. Unfortunately, in this case the petitioner has not placed, on record any income proof of his earnings. It is only stated by him that he is an auto driver. In such a situation, to minimize the element of guess work it would be***

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appropriate if the minimum wages are taken as the basis for determining the expected income. The minimum wages multiplied by a factor of 1.5 would enable in arriving at a reasonable estimate of income. The minimum wages for skilled workers notified by the office of the Labour Commissioner, government of NCT for the year 14-4-2009 was Rs 4,358 per month. If the same is multiplied by a factor of 1.5, it becomes Rs 6,537 per month.

27. It can safely be assumed that Nand Kishore as an adult would have earned at least as much as his father if not more. Therefore the multiplicand would be the expected annual income less required by himself. *Since the expected income would only arise when Nand Kishore grew up to be an adult, it would be safe to assume that his personal expenditure would be higher. The contribution to the household would have not exceeded half of the income. Accordingly, the figure of Rs 6,537 ought to be divided by 2 to provide a monthly figure of Rs 3,268.50 and an annual figure of Rs 39,222. This multiplicand is to be multiplied by the multiplier of 15, in terms of second schedule of Motor Vehicles Act, 1988. This comes to be a figure of Rs 5,88,330. Taking the above calculation into account, the total compensation to which the petitioners are entitled works out to be Rs 2,03,216.38 + Rs 5,88,330 = Rs 7,91,546.38. The petitioner has disclosed that he has already received Rs 80,000 till date towards compensation.*

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Therefore, the compensation amount payable on the date of filing of the petition works out to Rs 7,11,546.38. This amount shall carry simple interest @ 6% p.a. from the date of filing this petition till the date of payment. The amount should be paid to the petitioner within three months."

99. In the present case, in absence of any proof of income or occupation of the petitioners and in view of the fact that the children were engaged in scrap collection, I am of the view that minimum rate of wage for a skilled person as applicable on the date of incident shall be used for the purpose of computing pecuniary compensation. The same is based on the presumption that the children at present were of a young age and in the course of years they would have attained some form of skill or training.

100. As per the Order dated 09.03.2010 by Labour Department, Government of National Capital Territory of Delhi, the minimum rate of wage with effect from 01.02.2010 for a skilled worker was Rs. 6,448/- per month.

101. In the judgment of Hon'ble Division Bench dated 29.05.2026 in the case of ***Pravesh Kumar (Supra),*** the judgment of learned Single Judge dated 18.11.2024 was partly modified (in the appeal filed by the petitioner) only to the extent that the learned Single Judge failed to adjust the annual income by a multiplying factor of 1.5 in order to offset inflation and erosion in the value of money. The relevant paragraphs of the judgment of Hon'ble Division Bench read as under:

"17. Accordingly, the annual income determined for the purposes of assessing pecuniary compensation is liable to

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be multiplied by a factor of 1.5 so as to offset inflation and erosion in the value of money. The said principle has been evolved to ensure that the compensation awarded remains just, fair, and realistic, having due regard to the impact of inflation and the diminishing value of money.

18. In the present case as well, once the monthly salary of Appellant 1 was taken as the assumed monthly income of the Deceased-Child, the factor of 1.5, as recognised in Laxmi Narayan (supra), Rajeev Singhal (supra), and Sharafat Khan (supra), would equally apply for the purpose of offsetting inflation and devaluation of money. The contention advanced on behalf of Respondent 1 that application of the factor of 1.5 would amount to conferring a double benefit cannot be accepted, inasmuch as the said factor is applied solely as a measure to neutralise inflationary effects and erosion in the value of money while determining just compensation in accordance with settled law.

19. In view of the above, the compensation payable to the Appellants under the pecuniary head is liable to be recomputed by taking the monthly income of Appellant 1 at Rs 20,000 and, thereafter, applying the factor of 1.5. The adjusted monthly income thus works out to Rs 30,000. Upon deducting 50% towards personal expenses, the monthly contribution is assessed at Rs 15,000. Applying the

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multiplier of 15, the compensation payable under the pecuniary head is quantified at Rs 27,00,000 and adding the standard compensation in the sum of Rs 3,78,947 to the pecuniary compensation, the total compensation payable to the Appellants stands reassessed at Rs 30,78,947.

20. Insofar as the rate of interest is concerned, we do not find any ground warranting interference with the rate of 6% per annum awarded by the learned Single Judge, the same being consistent with the rate of interest awarded in similar cases. Accordingly, the enhanced compensation of Rs 30,78,947 shall carry simple interest at the rate of 6% per annum from the date of the incident, i.e., 20-7-2016, until the date of realisation.

21. Consequently, the present appeal stands partially allowed and the Impugned judgment is modified in the aforesaid terms."

102. For the reasons stated above, having already accepted the expected monthly income of the children in the present case as Rs. 6,448/-, it needs to be adjusted with respect to the multiplying factor of 1.5. Thus, Rs. 6,448 x 1.5 = Rs. 9,672/-.

103. Now, after deducting 50% of the same towards personal expenses of each child, the monthly contribution of each child in their respective families can be assessed at Rs. 4,836/-.

104. On the basis of monthly contribution of Rs. 4,836/-, the annual contribution of each child is Rs. 58,032/-.

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105. Applying the multiplier of 15, the pecuniary compensation payable to the petitioners with respect to each child can be assessed as Rs. 8,70,480 (Rs. 58,032 x 15).

106. Hence, the compensation payable to the petitioners in the present petition under the head of pecuniary loss is Rs. 8,70,480/- for each child namely, Master Robiyal and Master Arjun.

107. Since the petitioners are persons with limited means and have been pursuing this litigation for over 10 years, I am inclined to allow the costs of litigation in favour of the petitioners to the extent of Rs. 1,00,000/- for each petitioner.

108. Accordingly, the entire payable compensation to the petitioners is:

Standard Compensation + Pecuniary loss of dependency

Rs. 2,30,147 + Rs. 8,70,480/-

= Rs. 11,00,627/-.

CONCLUSION

109. For all the aforesaid reasons, having found negligence in the conduct of authorities namely respondent No. 1/DDA and respondent No.2/DJB in fulfilment of their duties owed to the general public in the present cases, the petitioners in both the petitions are entitled to a compensation of Rs. 11,00,627/- each along with simple interest at the rate of 9% per annum from the date of filing of the writ petitions till the date of payment.

110. Accordingly, the respondent No. 1/DDA and respondent No. 2/DJB are directed to pay a lump sum amount of Rs. 11,01,000/- (rounded off) along with interest calculated in the manner as stated above to the petitioners in both the petitions, i.e., W.P. (C) 284/2016 and W.P. (C)

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317/2016 separately, plus Rs. 1,00,000/- as costs of litigation (in each petition). The liability of respondent No. 1/DDA and respondent No. 2/DJB for the purpose of payment as described above is joint and several.

111. Since respondent No. 3/MCD had no role in the maintenance of the Park, no liability is fastened upon them.

112. The present petitions are allowed in the aforesaid terms.

JASMEET SINGH, J

NOVEMBER 18th, 2026/SS

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