IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 11.11.2024
Pronounced on : 11.02.2025

1) RSA No.2068 of 2023 (O&M)

Manjeet Kaur and others …Appellants

Versus

State of Haryana and others …Respondents

2) RSA No.2908 of 2022 (O&M)

State of Haryana and others …Appellants

Versus

Manjeet Kaur and others …Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Shvetanshu Goel, Advocate,
Mr. Shrey Goel, Advocate and
Mr. Gagan Singh, Advocate
for the Appellants (RSA-2068-2023)
for the Respondents (RSA-2908-2022).

Mr. Sharan Sethi, Addl.A.G., Haryana
for the Respondents (RSA-2068-2023)
for the Appellants (RSA-2908-2022).

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PANKAJ JAIN, J.

Plaintiffs as well as defendants are in cross appeals. For convenience, the parties are being referred to by their original position in the

suit i.e. the appellants in RSA No.2068 of 2023 & respondents in RSA No.2908 of 2022 as plaintiffs and appellants in RSA No.2908 of 2022 and respondents in RSA No.2068 of 2023 as defendants.

2. Plaintiffs filed suit for recovery of Rs.70,00,000/- as compensation on account of death of Yashpal in a fatal accident. As per the case of Plaintiffs, Yashpal who was working as an Engineer and was earning Rs.45,000/- per month, used to travel from home to office and back in his Alto car. On 16.05.2014, while he was coming back from his duty, car fell into the Canal. It resulted into his death by drowning. Death of Yashpal in the accident is on account of negligence on the part of defendants-State. The bridge had no proper railing, hence was not protected. There was no lighting. In the night, Yashpal while crossing the bridge by car, accidently fell into the Canal, resulting in loss of his life. Even before Yashpal met with an accident and lost his life, many accidents occurred on the spot but the authorities always remained inert. Yashpal was 35 years of age at the time of his death and was the sole earning member of the family. The death of Yashpal having been caused on account of carelessness and negligence on the part of defendants-State, they are liable to pay compensation to plaintiffs.

2.1. Suit was contested by defendants claiming that the suit was not maintainable. Village Road Bridge was existing at RD33870 of Sarsa Branch connecting the road from Village Shergarh to Village Kalsi. It is a narrow bridge and is not meant for heavy vehicles. The accident occurred on account of negligence and carelessness of deceased. The bridge in question is a foot

bridge since 1951 and later on carriage way was increased upto 12 inch in the year 1976. Best possible route to reach place of employment of deceased was through National Highway and not through link road. Yashpal died on account of his own negligence and not on account of any negligence on the part of defendants.

2.2. On the basis of pleadings, the Court of first instance framed following issues:-

1. *Whether the plaintiffs are entitled for a decree for recovery of Rs.70,00,000/- as a compensation along with interest @ 18% upto date from the date of accident till its realization? OPP*

2. *Whether the suit is not maintainable? OPD*

3. *Whether the plaintiffs are not having locus standi and cause of action to file and maintain the present suit? OPD*

4. *Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD*

5. *Whether the civil court is not having jurisdiction to try and entertain the present suit? OPD*

6. *Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD*

7. *Whether the suit is bad for misjoinder and non-joinder of necessary parties? OPD*

8. *Whether the suit is time bared? OPD*

9. *Relief.*

2.3. While answering issue No.1, the Trial Court found that it was bounden duty of defendants-State to maintain the bridge. Though defendants claimed that the bridge in question was a narrow bridge and was not to be used by vehicles but there is no notification or letter or record produced by

defendant-department. Invoking the principle of strict liability and finding the department negligent in not maintaining the bridge by properly installing railing over the same, the Court of first instance found the defendants to be negligent and awarded damages of Rs.40 lakh to plaintiffs.

2.4. In appeal preferred by defendants, the Lower Appellate Court found that since there was no eye witness to the accident. There was no express rule shown which required that railing was needed to be installed on the bridge. Yashpal being conscious of the narrow bridge, he was also negligent. Resultantly, the Lower Appellate Court held the deceased, Yashpal, to be equally negligent to the extent of 50% and reduced the compensation/damages awarded to the plaintiffs to Rs.20 lakh.

3. Parties are in cross appeals impugning the judgment and decree passed by Lower Appellate Court. Defendants are also aggrieved of judgment and decree passed by the Court of the first instance.

4. Learned Additional Advocate General while assailing the impugned judgments and decrees submits that findings recorded by Courts below with respect to negligence on part of the defendants cannot be sustained. He submits that bridge in question where the deceased met with an accident was not meant for motor vehicles. It was a narrow bridge which was meant to be a foot bridge only. Deceased himself in order to avail a short route used the same even though the same was not permissible. There being no eye witness to suggest that the accident occurred on account of improper railing of the bridge, the Courts below erred in saddling the defendants with

liability to pay compensation. He submits that the deceased Yashpal himself being negligent and responsible in the accident that led to loss of his life, the suit deserves to be dismissed. To support his contentions, he relies upon Supreme Court judgments passed in ***Rajkot Municipal Corporation vs. Manjulben Jayantilal Nakum and others, 1997(9) SCC 552 and Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy and others, AIR 2012 Supreme Court 100***.

5. *Per contra,* counsel for the plaintiffs submits that even if the case of the State is to be believed that the bridge in question was merely a foot bridge, there was no board or signage to convey the same. He submits that the plea being raised before this Court with respect to the bridge not being a motorable bridge, is against the written statement filed before the Courts below. The positive case asserted in the written statement by the defendants is that the bridge was not meant for heavy vehicles. Alto car was not a heavy vehicle. He further submits that the State can not escape its liability for being negligent in maintaining the bridge. There was no proper railing installed which led to accident and loss of precious life. Had the railing been installed there, life of deceased Yashpal would have been saved. He further submits that the Lower Appellate court erred in invoking the principle of contributory negligence. As per the settled proposition of law, wherever there is an issue of strict liability, the question of there being contributory negligence, does not arise. In order to support his contentions, he relies upon ***Urmila Devi vs. MCD and others, 2016 SCC OnLine Del 5887; Karni Singh Rajput and another***

vs. Chief Engineer, Jaipur and others, 2018(1) RLW 694 (Raj.); Sankar Paramanik and another vs. Executive-cum-Team Leader, NESCO and others, 2016 SCC OnLine Ori 283; State of Haryana and others vs. Piyoja Saini and another, (2018) 4 RCR (Civil) 299; Gopalpur Victim Association vs. Delhi Jal Board and others, 2011(122) DRJ 428 (DB); Madhya Pradesh Electricity Board vs. Shail Kumari and others, AIR 2002 SC 551 and Kishan Lal and others vs. Govt. of NCT of Delhi and others, AIR 2007 (NOC) 2444 (Del).

6. None of the parties have raised any plea regarding computation of compensation.

7. I have heard learned counsels for the parties and carefully gone through records of the case.

8. The facts are not much in dispute. It is admitted case that Yashpal, deceased, died of drowning after his car fell into Canal while crossing the bridge. The issue of liability *qua* negligence of Public Authority/State has been addressed in detail by Supreme Court in ***Rajkot Municipal Corporation's case (supra)***, wherein the Supreme Court held that elements of tort of negligence consist of :

a) duty of care,
b) duty owed to the plaintiff,
c) careless breach of such duty.

Enlisting the elements of negligence, the Supreme Court held that in each case the Court is required to examine the following issues:-

i) Whether the defendant owed duty of care to the plaintiff;

ii) Whether the plaintiff is a person or a class of persons to which the defendant owed a duty of care;

iii) Whether the defendant was negligent in performing that duty or omitted to take such reasonable care in the performance of the duty;

iv) Whether damage must have resulted from that particular duty of care which the defendant owed to the particular plaintiff or class of persons.

9. Supreme Court in ***Rajkot Municipal Corporation's case (supra)*** held that generally the public authorities are liable for positive action (misfeasance) but not for omission (non-feasance). It has been further observed that considering the duty of public authority to avoid harm to those likely to be affected by the exercise of power or duty, the courts need to apply the test of proximity. The following observations are pertinent:-

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57. It would thus be seen that each case requires to be examined in the light of the special circumstances, viz., whether the defendant owed a duty of care to the plaintiff, whether the plaintiff is a person or a class of persons to which the defendant owed a duty of care, whether the defendant was negligent in performing that duty or omitted to take such reasonable care in the performance of the duty, whether damage must have resulted from that particular duty of care which the defendant owed to the particular plaintiff or class of persons. Public authorities discharge public obligations to the public at large. Therefore, it owes a duty of care at common law to avoid causing present or

imminent danger to the safety of the plaintiff or a class of persons to which the plaintiff belongs. It is a statutory duty of care under common law which could give rise to actionable claim in the suit of the individual and it is capable of coexistence alongside a statutory duty. The duty of care imposed on a local authority by law may not be put beyond what the statute expects of the local authority or Corporation to perform the duty. The tort of insuperable negligence would emerge from imminent danger created by a positive act. But the duty of care imposed on local authority by law may be gauged from the circumstances in which and the conditions subject to which the duty of care has been imposed on the statutory authority. The imminent danger theory must be viewed keeping at the back of mind the act or conduct creating the danger to the plaintiff or the class of persons to which he belongs and that by negligent conduct the defendant causes damage to the property or person of the plaintiff, though the defendant is not in know of the danger. The defendant also in given circumstances, must owe special responsibility or proximity imposing foreseeable duty to care, to safeguard the plaintiff from the danger or to prevent it from happening.

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10. The aforesaid test has been followed with approval by Supreme Court in the case of ***Keral Tourism Development Corporation Ltd. vs. Deepti Singh, (2019) 16 SCC 573*** observing as under:-

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(i) Existence of a duty of care

11. In Caparo Industries Plc. v. Dickman [Caparo Industries Plc. v. Dickman, (1990) 2 AC 605 : (1990) 2 WLR 358 (HL)] , the

House of Lords observed that three ingredients are necessary for the existence of a duty of care : (i) foreseeability of the damage; (ii) proximity of relationship between the parties; and (iii) whether it is "just, fair and reasonable" that the law should impose a duty of care. Lord Bridge stated thus :

> *"… What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of "proximity" or "neighbourhood" and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other."*

12. In Rajkot Municipal Corpn. [Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum, (1997) 9 SCC 552] , this Court, relied on Michael A. Jonas's treatise [4th Edn. (1995).] on the Law of Torts and observed thus :

> *"33. … as a tort, negligence consists of a legal duty to take care and breach of that duty by the defendant causes damage to the plaintiff. Duty determines whether the type of loss suffered by the plaintiff in the particular way in which it occurred can ever be actionable. Breach of duty is concerned with the standard of care that ought to have been adopted in the circumstances, and whether the defendant's conduct fell below that standard i.e. whether he was careless. The division of negligence into duty, breach and consequent damage is convenient for the purpose of exposition but it can be confusing because the issues will often overlap. He has elaborated the general principles viz. the neighbourhood principle as laid down in Donoghue v. Stevenson [Donoghue v. Stevenson, 1932 AC 562 (HL)] and has stated at p. 27 that the result would seem to be that factors which formerly might have been considered at the second stage of Lord Wilberforce's test, policy considerations which ought to 'negative, or to reduce or to limit the scope of the duty', should be taken into account at an earlier point when deciding whether a relationship of proximity between the plaintiff and the*

defendant exists. The second stage of the test will apply only rarely i.e. in a limited category of cases where, notwithstanding that a case of negligence is made out on the proximity basis, public policy requires that there should be no liability. This new approach represents a shift of emphasis rather than a new substantive test for the existence of a duty of care. In future, rather than starting from a prima facie assumption that where a defendant's carelessness causes foreseeable damage, a duty of care will exist, subject to policy considerations which may negative such a duty. The courts will determine the duty issue on a case-by-case basis, looking in particular at the nature of the relationship between parties to determine whether it is sufficiently proximate. That question is of an intensely pragmatic character, well suited for gradual development but requiring most careful analysis. The following requirements must be satisfied before a duty of care is held to exist:

(i) foreseeability of the damage;

(ii) a sufficiently proximate relationship between the parties; and

(iii) even where (i) and (ii) are satisfied it must be just and reasonable to impose such a duty."

(emphasis supplied)

13. In India Tourism Development Corpn. Ltd. v. Susan Leigh Beer [India Tourism Development Corpn. Ltd. v. Susan Leigh Beer, 2014 SCC OnLine Del 3376 : (2014) 144 DRJ 63] , the respondent had slipped into a swimming pool maintained by the appellant on account of the growth of algae on the tiles of the swimming pool and sustained serious injuries. A Division Bench of the Delhi High Court held that the appellant did owe a duty of care to the respondent. It observed as follows :

"80. … Guests at the swimming pool are closely and directly affected by acts or omissions of those responsible for the maintenance of a pool; proximity of the respondent

> *to the appellant thus existed in this case. It is reasonably foreseeable that algal growth on the floor of the pool is likely to make the floor slippery, thus likely to injure guests at the pool."*

14. In the case before us, the deceased and the complainant were guests in the hotel run by the appellant. Since the facility of a swimming pool was available for use by the guests of the hotel, there was a close and proximate relationship between the management involving the maintenance of safe conditions in the pool and guests of the hotel using the pool. A hotel which provides a swimming pool for its guests owes a duty of care. The duty of care arises from the fact that unless the pool is properly maintained and supervised by trained personnel, it is likely to become a potential source of hazard and danger. Every guest who enters the pool may not have the same level of proficiency as a swimmer. The management of the hotel can reasonably foresee the consequence which may arise if the pool and its facilities are not properly maintained. The observance of safety requires good physical facilities but in addition, human supervision over those who use the pool. Allowing or designating a lifeguard to perform the duties of a bartender is a clear deviation from the duty of care. Mixing drinks does not augur well in preserving the safety of swimmers. The appellant could have reasonably foreseen that there could be potential harm caused by the absence of a dedicated lifeguard. The imposition of such a duty upon the appellant can be considered to be just, fair and reasonable. The failure to satisfy this duty of care would amount to a deficiency of service on the part of the hotel management.

(ii) Breach of duty

15. In Winfield & Jolowicz on Torts [19th Edn., 2014, p. 144.] , it has been observed that the following conditions must be satisfied in order to prove a breach of the duty of care:

> *"The process of determining whether there has been a breach of duty involves three steps. These steps are often not neatly separated from each other, but it is essential to distinguish between them if one is to understand properly this area of the law. First, it is necessary to ascertain the qualities of the reasonable person. This is a question of law. Secondly, it must be asked how much care the reasonable person, given the qualities attributed to him, would have taken in the circumstances. The factors that are permissible to take into account in this regard are prescribed by the law, but the amount of care that the reasonable person would have taken given those factors is a question of fact. Thirdly, it must be determined whether the defendant took less care of the claimant's interests than the reasonable person would have taken. This is a question of fact. If the defendant took less care than the reasonable person would have taken, the defendant will be found to have acted negligently, and the breach element of the tort of negligence will be satisfied."*

16. The safety norms for water sports prescribed by the National Institute of Water Sports in the Ministry of Tourism of the Government of India cast an obligation upon the person or entity which provides a swimming pool in a hotel to appoint a lifeguard for the pool. The lifeguard should not be given any other duties which would distract her from the work of a lifeguard. The role of a lifeguard has been succinctly set out by the National Commission thus:

> *"We need to keep in mind that the lifeguard is not an ordinary swimmer. As per the norms laid down in the above referred regulation, he should be able to swim 100*

m in two minutes without resting, by way of crawl or breast stroke; he should be able to dive 08 inch deep and bring up a 5 kg weight to the poolside/bank and he should be able to tread without moving the legs for minimum 01 minute. The person who gets appointed as a lifeguard needs to possess a valid lifesaving technique certification from the agencies like National Pool and Water Parks and Association and Safety Council. Such certification is granted after a two-day revalidation course to confirm that he meets the stipulated physical fitness and rescue standards."

17. The Court of Appeal in Singapore, in BNM v. National University of Singapore [BNM v. National University of Singapore, (2014) 2 SLR 258 (Singapore)], dealt with a case where the plaintiff's husband drowned while swimming in a pool owned by the National University of Singapore. The deceased got into difficulties while swimming and his friend pulled him out before the lifeguards came to the rescue. The court held:

"48. … A finding of negligence would depend on a number of factors in determining whether the difficulties of a swimmer in the water should have been apparent to the lifeguard on duty had he performed his duties diligently. The view of the lifeguard would be particularly material in this assessment and that would in turn depend on a number of factors such as the size of the pool, the number of swimmers in the pool and the available lighting i.e. whether it was day or night. Other relevant considerations would include whether there were shouts for help by the swimmer in distress or other users of the pool, whether there was unusual splashing, whether the swimmer was struggling or motionless in the pool or whether there were other distractions which the lifeguard was required to attend to. There is no inflexible rule that the lifeguard is entitled to a certain amount of time to react before which an inference of negligence can be drawn. What is clear is that the longer it takes for a lifeguard to detect a swimmer in distress in the water, the more likely an inference of

negligence would be drawn. The lapse of time before reacting is only one factor for consideration.…"

(emphasis supplied)

18. In the present case, it is an admitted position of fact that the lifeguard on duty was also functioning as the bartender, and that a foreigner was the first one to notice the deceased drowning in the swimming pool. The breach of the duty of care lies in the fact that while the hotel had made the facility of a swimming pool available for its guests, it ought to have assigned a lifeguard who would perform his duties only in that capacity. The reasoning of NCDRC to the effect that a lifeguard on duty should not be distracted by virtue of being assigned other duties, is eminently fair and proper.

19. Moreover, the hotel did not adduce any evidence of the lifeguard in the present case who would have been the best person to make a disclosure of facts which were to his knowledge. The Managing Director, who appeared as a witness, was not present at the time of the incident. His version was hearsay evidence. Hence, we find no difficulty in holding that there was a breach of the duty of care owed by the appellant.

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11. The issue of liability of the public authority arising out of duty casted upon the public authorities and States was also elaborately dealt with by Supreme Court in the case of ***N.H.A.I vs. Aam Aadmi Lokmanch, (2021) 11 SCC 566***. The ratio of law laid down in ***Rajkot Municipal Corporation's case (supra)*** has been further elaborated by Supreme Court in ***N.H.A.I.'s case*** observing as under:-

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59. This issue had arisen in Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum [Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum, (1997) 9 SCC 552] in the context of certain facts. The deceased used to travel on a railway season ticket to Rajkot to attend to his office work. One day whilst he was on the footpath on the way to his office, a roadside tree suddenly fell on him, resulting in serious injuries on the head and other parts of the body, and later died in the hospital. The High Court allowed [Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum, 1991 SCC OnLine Guj 54 : 1992 ACJ 792] the writ petition. This Court noted the distinction between a common law duty of care owed to members of the public, and whether liability could be imposed upon a local authority for breach of its statutory duty. The Court noticed previous English decisions [Gorris v. Scott, (1874) LR 9 Exch 125 and Kilgollan v. William Cooke & Co. Ltd., (1956) 1 WLR 527 : (1956) 2 All ER 294 (CA)] and stated that :

> *"18. The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any other form of tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the*

statute may not give rise to cause of action unless it is breached and it has caused damage to the plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of volenti non fit injuria, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it prima facie creates at the same time corelative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.

19. Duty may be of such paramount importance that it is owed to all the public. It would be wrong to think that on an action, the duty could be enforced by way of damages when duty is owed to a section of public and cannot be enforced if an individual sustains damages to whom the Corporation owes no duty and no private interest is infringed. Breach of statutory duty, therefore, requires to be examined in the context in which the duty is created not towards the individual, but has its effect on the right of

individual vis-à-vis the society. Statutory duty generally is towards public at large and not towards an individual or individuals and the corelative right is vested in the public and not in private person, even though they may suffer damages. The duty in such a case is to be enforced by way of criminal prosecution or by way of injunction at the suit under Section 19 CPC or with leave of court under Order 1 Rule 8 CPC by public-spirited person or in any appropriate manner to enforce the right and not by way of private action for damages. In that situation, the legislature, while recognising the private right vested in an injured individual, may intend that it shall be maintained solely by some special remedy provided for a particular case and not by ordinary method of an action for damages as penalty or compensation.

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24. Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power. Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exercise of its statutory power or by giving necessary warnings. It is the conduct of the authority in creating the danger that attracts the duty of care as envisaged in Sheppard v. Borough of Glossop [Sheppard v. Borough of Glossop, (1921) 3 KB 132 (CA)] . The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can build a cause of action. …

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39. It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public

> *authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail."*

60. In the UK, the duty of a highway authority was described by Diplock, L.J. in Griffiths v. Liverpool Corpn. [Griffiths v. Liverpool Corpn., (1967) 1 QB 374 : (1966) 3 WLR 467 (CA)] as follows :

> *"… The duty at common law to maintain, which includes a duty to repair a highway, was not based in negligence but in nuisance. It was an absolute duty to maintain, not merely a duty to take reasonable care to maintain, and the statutory duty which replaced it was also absolute."*

Again, Diplock, L.J. stated in Burnside v. Emerson [Burnside v. Emerson, (1968) 1 WLR 1490 (CA)] described the duty as follows:

> *"… in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition."*

61. Later, in Haydon v. Kent County Council [Haydon v. Kent County Council, 1978 QB 343 : (1978) 2 WLR 485 (CA)] Lord Denning M.R. explained that while the duty to maintain the highway meant an absolute duty to ensure that it was in a condition to be used as a highway and to ensure safety, it did not include the duty to ensure at all times that the road surface was kept clean. It was clarified however, that the issue had to be considered in each case, and it was to be considered whether the authority had taken reasonable steps to keep it in good repair after being notified about obstruction:

> *"If Section 41 is to be construed as capable of imposing a duty to take remedial measures to deal with ice and snow on a highway, or footway, which is in good physical*

> *repair, so that whether in particular circumstances that duty has arisen is to be decided 'as a question of fact and degree,' it would seem that the facts relevant to determining whether the duty has arisen would be essentially similar to those relevant to deciding whether a breach of the duty has been proved and whether the statutory defence under Section 58 has been made out. Parliament did not define those facts for the purpose of Section 41. The concept of the passing of sufficient time to make it prima facie unreasonable for the highway authority to have failed to take remedial measures must presuppose some idea of the amount and nature of the resources for dealing with snow and ice which are or ought to be available to the authority, and of the order of priority among different carriageways and footways which guides or which ought to guide the authority; and of the necessary degree of urgency in using those resources. No such guidance is given in the statute with reference to proof of the arising of the duty."*

62. In Stovin v. Wise [Stovin v. Wise, 1996 AC 923 : (1996) 3 WLR 388 : (1996) 3 All ER 801 (HL)] , the defendant emerged from a side road and ran down the plaintiff, because she was not keeping a proper lookout. When she was sued for damages, the defendant joined the County Council as a third party because the visibility at the intersection was poor and they said that the Council, which had the duty to maintain the road should have done something to improve it. The Council had statutory powers which would have enabled the necessary work to be done and there was evidence that the relevant officers had decided in principle that it should be done, but they had not taken steps to do it. The House of Lords held that there was no duty of care in private law based on the statutory duty, and that "Drivers of vehicles must take the highway network as they find it". It was held that statutory power could not be converted into a common law duty. The Council had done nothing which, apart from statute, would have attracted a common law duty of care. It had done nothing at all. The only basis on which it was a candidate for liability was that Parliament had

entrusted it with general responsibility for the highways and given it the power to improve them and take other measures for the safety of their users. Lord Hoffmann observed :

> *"In summary, therefore, I think that the minimum preconditions for basing a duty of care upon the existence of a statutory power, if it can be done at all, are, first, that it would in the circumstances have been irrational not to have exercised the power, so that there was in effect a public law duty to act, and secondly, that there are exceptional grounds for holding that the policy of the statute requires compensation to be paid to persons who suffer loss because the power was not exercised."*

63. Stovin [Stovin v. Wise, 1996 AC 923 : (1996) 3 WLR 388 : (1996) 3 All ER 801 (HL)] and its enunciation that the existence of a public duty did not per se extend to a private duty of care to take special measures, unless exceptional features were proved, was followed in Gorringe v. Calderdale Metropolitan Borough Council [Gorringe v. Calderdale Metropolitan Borough Council, (2004) 1 WLR 1057 (HL)] . The entire law was re-examined and the correct position, restated in a recent judgment by the UK Supreme Court in Robinson v. Chief Constable of West Yorkshire Police [Robinson v. Chief Constable of West Yorkshire Police, 2018 AC 736 : (2018) 2 WLR 595 : (2019) 2 All ER 1041 (UKSC)], which observed as follows :

> *"32. At common law, public authorities are generally subject to the same liabilities in tort as private individuals and bodies : see, for example, Entick v. Carrington [Entick v. Carrington, (1765) 2 Wils KB 275 : 95 ER 807] and Mersey Docks & Harbour Board v. Gibbs [Mersey Docks & Harbour Board v. Gibbs, (1866) LR 1 HL 93] . Dicey famously stated that 'every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen' : The Law of the*

Constitution, 3rd Edn. (1889), p. 181. An important exception at common law was the Crown, but that exception was addressed by the Crown Proceedings Act, 1947, Section 2.

33. Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority : see, for example, Dorset Yacht Co. Ltd. v. Home Office [Dorset Yacht Co. Ltd. v. Home Office, 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] , as explained in Gorringe case [Gorringe v. Calderdale Metropolitan Borough Council, (2004) 1 WLR 1057 (HL)] , WLR para 39. That general principle is subject to the possibility that the common law or statute may provide otherwise, for example by authorising the conduct in question : Geddis v. Proprietors of Bann Reservoir [Geddis v. Proprietors of Bann Reservoir, (1878) LR 3 AC 430 (HL)] . It follows that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise.

34. On the other hand, public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm : as Lord Toulson, JSC stated in Michael case [Michael v. Chief Constable of South Wales Police (Refuge intervening), 2015 AC 1732 : (2015) 2 WLR 343 (UKSC)] , AC para 97, 'the common law does not generally impose liability for pure omissions'. This "omissions principle" has been helpfully summarised by Tofaris and Steel, "Negligence Liability for Omissions and the Police" [Tofaris and Steel, "Negligence Liability for Omissions and the Police", (2016) 75 CLJ 128] :

> *'In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A's status*

creates an obligation to protect B from that danger.'

35. As that summary makes clear, there are certain circumstances in which public authorities, like private individuals and bodies, can come under a duty of care to prevent the occurrence of harm : see, for example, Barrett v. Enfield London Borough Council [Barrett v. Enfield London Borough Council, (2001) 2 AC 550 : (1999) 3 WLR 79 (HL)] and Phelps v. Hillingdon London Borough Council [Phelps v. Hillingdon London Borough Council, (2001) 2 AC 619 : (2000) 3 WLR 776 (HL)] , as explained in Gorringe case [Gorringe v. Calderdale Metropolitan Borough Council, (2004) 1 WLR 1057 (HL)] , WLR paras 39 and 40. In the absence of such circumstances, however, public authorities generally owe no duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body : see, for example, Smith v. Littlewoods Organisation Ltd. [Smith v. Littlewoods Organisation Ltd., 1987 AC 241 : (1987) 2 WLR 480 (HL)] , concerning a private body, applied in Mitchell v. Glasgow City Council [Mitchell v. Glasgow City Council, 2009 AC 874 : (2009) 2 WLR 481 (HL)], concerning a public authority.

36. That is so, notwithstanding that a public authority may have statutory powers or duties enabling or requiring it to prevent the harm in question. A well-known illustration of that principle is the decision of the House of Lords in East Suffolk Rivers Catchment Board v. Kent [East Suffolk Rivers Catchment Board v. Kent, 1941 AC 74 (HL)] . The position is different if, on its true construction, the statutory power or duty is intended to give rise to a duty to individual members of the public which is enforceable by means of a private right of action. If, however, the statute does not create a private right of action, then 'it would be, to say the least, unusual if the mere existence of the statutory duty [or, a fortiori, a statutory power] could generate a common law duty of care' : Gorringe case [Gorringe v. Calderdale Metropolitan Borough Council, (2004) 1 WLR 1057 (HL)] , WLR p. 1065, para 23.

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40. However, until the reasoning in Anns case [Anns v. Merton London Borough Council, 1978 AC 728 : (1977) 2 WLR 1024 (HL)] was repudiated, it was not possible to

justify a rejection of liability, where a prima facie duty of care arose at the first stage of the analysis from the foreseeability of harm, on the basis that public bodies are not generally liable for failing to exercise their statutory powers or duties so as to confer the benefit of protection from harm. Instead, it was necessary to have recourse to public policy in order to justify the rejection of liability at the second stage. That was accordingly the approach adopted by the House of Lords and the Court of Appeal in a series of judgments, including Hill case [Hill v. Chief Constable of West Yorkshire, 1988 QB 60 : (1987) 2 WLR 1126 (CA); Hill v. Chief Constable of West Yorkshire, 1989 AC 53 : (1988) 2 WLR 1049 (HL)] . The need to have recourse to public policy for that purpose has been superseded by the return to orthodoxy in Gorringe case [Gorringe v. Calderdale Metropolitan Borough Council, (2004) 1 WLR 1057 (HL)] . Since that case, a public authority's non-liability for the consequences of an omission can generally be justified on the basis that the omissions principle is a general principle of the law of negligence, and the law of negligence generally applies to public authorities in the same way that it applies to private individuals and bodies.

41. Equally, concerns about public policy cannot in themselves override a liability which would arise at common law for a positive act carried out in the course of performing a statutory function : the true question is whether, properly construed, the statute excludes the liability which would otherwise arise : see Gorringe case [Gorringe v. Calderdale Metropolitan Borough Council, (2004) 1 WLR 1057 (HL)] , WLR para 38, per Lord Hoffmann.

42. That is not to deny that what might be described as policy considerations sometimes have a role to play in the law of negligence. As explained earlier, where established principles do not provide a clear answer to the question whether a duty of care should be recognised in a novel situation, the court will have to consider whether its recognition would be just and reasonable."

64. In Yetkin v. Mahmood [Yetkin v. Mahmood, 2011 QB 827 : (2011) 2 WLR 1073 (CA)] , where injury was caused to a highway

user by shrubs which had overgrown and impeded visibility, the Court upheld the claim for damages. The Court observed as follows :

> *"33. … The planting of vegetation in the raised beds of the central reservation is obviously a reasonable exercise of the authority's powers but to plant shrubs which will grow so large as to obscure the view and then not to ensure that they are trimmed back is a negligent exercise of those powers. The Judge held that that failure was a cause of this accident. It is not suggested that he was not right so to hold. I have no doubt that, in the circumstances of this case, the local authority had a common law duty of care towards the claimant, notwithstanding her own negligence, that that duty was breached and that the breach was a cause of the accident. There was no need for the Judge to consider whether the danger created by the bushes amounted to a trap or enticement. It follows in my judgment that the Judge erred in dismissing the claim. He should have held that primary liability was established."*

65. A similar approach was indicated by this Court in MCD v. Sushila Devi [MCD v. Sushila Devi, (1999) 4 SCC 317] , SCC at p. 323 (where a tree fell on a passer-by causing injury) wherein the Court upheld the findings that the Municipal Corporation was liable, stating that :

> *"13. By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see Brown v. Harrison [Brown v. Harrison, 1947 WN 191 : 63 TLR 484 (CA)] , Quinn v. Scott [Quinn v. Scott, (1965) 1 WLR 1004 (QB)] and Mackie v. Dumbartonshire County Council [Mackie v. Dumbartonshire County Council, 1927 WN 247]). The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state*

> *of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In MCD v. Subhagwanti [MCD v. Subhagwanti, AIR 1966 SC 1750] a clock tower which was 80 years' old collapsed in Chandni Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. '[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect,' — said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such a tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable."*
>
> *This approach that a statutory corporation or local authority can be held liable in tort for injury occasioned on account of omission to oversee, or defective supervision of its activities contracted out to another agency, was also followed in Vadodara Municipal Corpn. v. Purshottam V. Murjani [Vadodara Municipal Corpn. v. Purshottam V. Murjani, (2014) 16 SCC 14 : (2015) 3 SCC (Civ) 397 : (2015) 3 SCC (Cri) 389].*
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> *xxxx xxxx xxxx"*

12. The facts of the present case need to be gazed through the prism of aforesaid settled law. Mr. Sethi, learned Counsel for the State has emphatically argued that bridge was not meant for vehicles. It was merely a foot bridge. The deceased himself was negligent to drive on the said bridge in order to avoid highway. Even though the aforesaid plea raised by Mr. Sethi

seems to be at variance with the defence pleaded by the State in the written statement, yet even if the same is taken on the face value, Mr. Sethi admits that there is no evidence to suggest of any mandatory sign on the spot to indicate that motor vehicles were prohibited on the road or on the bridge. Chapter VIII of 1988 Act deals with control of traffic. Section 119 of 1988 Act contained in Chapter VIII provides that every driver of a motor vehicle shall drive in conformity with any indication given by mandatory traffic sign. Section 119(2) of 1988 Act provides that "mandatory traffic sign" means a traffic sign included in Part A of the First Schedule. At Sr. No.M6, mandatory sign of motor vehicles prohibited on the road has been prescribed in the First Schedule Part A appended to 1988 Act.

13. Thus, it is a case, wherein even though State constructed bridge, which was not meant for motor vehicles, yet fell in breach of statutory duty of not putting up mandatory sign as required under 1988 Act to indicate prohibition of motor vehicles on the road/bridge.

14. The arguments raised by learned State counsel indicts State even further. He submits that it was meant to be a bridge only. It being a foot bridge there was more requirement of the same being lighted and grilled properly in order to avoid any untoward incident. Both the Courts below have returned concurrent findings to the effect that there was no railing on the bridge. Neeraj, Ex. Sarpanch, who appeared as PW4, proved that applications were moved before the Deputy Commissioner requesting them to put proper railings on the bridge. It is only after two days of the accident, in which

Yashpal lost his life, that the railing was installed. Merely, for the reason that there was a highway connecting the village of the deceased to his place of employment is not enough to preclude him from using the road in question to commute.

15. Thus, State authorities owe a statutory duty to put a mandatory sign showing prohibition of vehicle on the bridge to all the motor drivers. Having constructed bridge and thereafter not putting relevant sign, amounts to misfeasance. The fact that applications were moved before the authorities to put railing indicates that the accident and damage were foreseen. Had railing been in place, probably Yashpal would not have lost his life.

16. All the commuters over the bridge are directly affected by misfeasance on part of the State authorities. The fact that the authorities woke up from slumber only after loss of life of Yashpal, to grill the bridge, proves the existence of their duty.

17. Having held that the authorities were in breach of duty which led to loss of life of Yashpal, the next question arises is *'whether the Lower Appellate Court was right in holding Yashpal to be contributory negligent.'*

18. In the foregoing paragraphs, this Court has held that the authorities were in breach of statutory duty. They owed duty to all commuters travelling on the bridge. This Court is of the view that Lower Appellate Court erred in holding Yashpal to be contributory negligent and thus reducing the compensation to 50%. Reference can be made to the following observations

made by High Court of ***M.P. Electricity Board v. Shail Kumari, (2002) 2 SCC 162*** :-

"xxxx xxxx xxxx

7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such

undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

9. The doctrine of strict liability has its origin in English common law when it was propounded in the celebrated case of Rylands v. Fletcher [(1868) 3 HL 330 : (1861-73) All ER Rep 1]. Blackburn, J., the author of the said rule had observed thus in the said decision :

> *"The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape."*

10. There are seven exceptions formulated by means of case-law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this: "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply."

11. The rule of strict liability has been approved and followed in many subsequent decisions in England. A recent decision in recognition of the said doctrine is rendered by the House of Lords

in Cambridge Water Co. Ltd. v. Eastern Counties Leather plc. [(1994) 1 All ER 53 (HL)] The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of this Court in Charan Lal Sahu v. Union of India [(1990) 1 SCC 613] and a Division Bench in Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] had followed with approval the principle in Rylands v. Fletcher [(1868) 3 HL 330 : (1861-73) All ER Rep 1] . By referring to the above two decisions a two-Judge Bench of this Court has reiterated the same principle in Kaushnuma Begum v. New India Assurance Co. Ltd. [(2001) 2 SCC 9 : 2001 SCC (Cri) 268].

12. In M.C. Mehta v. Union of India [(1987) 1 SCC 395 : 1987 SCC (L&S) 37] this Court has gone even beyond the rule of strict liability by holding that :

> *Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on anyone on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Rylands v. Fletcher [(1868) 3 HL 330 : (1861-73) All ER Rep 1] .*

13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher [(1868) 3 HL 330 : (1861-73) All ER Rep 1]) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In Northwestern Utilities Ltd. v. London Guarantee and Accident Co. Ltd. [1936 AC 108 : 105 LJPC 18 : 154 LT 89] the Privy Council repelled the contention of the defendant based on the aforecited exception. In

that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high-degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage.

14. The Privy Council has observed in Quebec Rly., Light, Heat and Power Co. Ltd. v. Vandry [1920 AC 662 : 89 LJPC 99 : 123 LT 1] that the company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and high-tension current found its way through the low-tension cable into the premises of the respondents was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road.

15. In W.B. SEB v. Sachin Banerjee [(1999) 9 SCC 21] the Electricity Board adopted a defence that electric lines were illegally hooked for pilferage purposes. This Court said that the Board cannot be held to be negligent on the said fact situation but the question of strict liability was not taken up in that case.

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19. The same has been further elaborated by Supreme Court in ***Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527*** as under:-

"xxxx xxxx xxxx

18. The theory of strict liability for hazardous activities can be said to have originated from the historic judgment of Blackburn, J. of the British High Court in Rylands v. Fletcher [(1866) LR 1 Ex 265] . Before this decision the accepted legal position in England was that fault, whether by an intentional act or negligence, was the basis of all liability (see Salmond on Tort, 6th Edn, p. 12) and this principle was in consonance with the then prevailing Laissez-Faire Theory.

19. With the advance of industrialisation the Laissez-Faire Theory was gradually replaced by the theory of the Welfare State, and in legal parlance there was a corresponding shift from positivism to sociological jurisprudence. It was realised that there are certain activities in industrial society which though lawful are so fraught with possibility of harm to others that the law has to treat them as allowable only on the term of insuring the public against injury irrespective of who was at fault. The principle of strict liability (also called no-fault liability) was thus evolved, which was an exception to the general principle in the law of torts that there is no liability without fault (vide American Jurisprudence, 2nd Edn., Vol. 74, p. 632).

20. As stated above, the origin of this concept of liability without fault can be traced back to Blackburn, J.'s historic decision in Rylands v. Fletcher [(1866) LR 1 Ex 265] . The facts in that case were that the defendant, who owned a mill, constructed a reservoir to supply water to the mill. This reservoir was constructed over old coal mines, and the mill owner had no reason to suspect that these old diggings led to an operating colliery. The water in the reservoir ran down the old shafts and

flooded the colliery. Blackburn, J. held the mill owner to be liable, on the principle that

> *"… the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape."*

On appeal, this principle of liability without fault was affirmed by the House of Lords (per Cairns, J.) but restricted to non-natural users vide Rylands v. Fletcher [(1868) LR 3 HL 330 : (1861-73) All ER Rep 1] .

21.Rylands v. Fletcher in fact created a new legal principle (the principle of strict liability in the case of hazardous activities), though professing to be based on analogies drawn from existing law. The judgment is noteworthy because it is an outstanding example of a creative generalisation. As Wigmore writes, this epoch-making judgment owes much of its strength to "the broad scope of the principle announced, the strength of conviction of its expounder, and the clarity of his exposition".

22. Strict liability focuses on the nature of the defendant's activity rather than, as in negligence, the way in which it is carried on (vide Torts by Michael Jones, 4th Edn., p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overheads" (see Fleming on Torts, 6th Edn., p. 302).

23. Thus, in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

24. The basis of the doctrine of strict liability is twofold: (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate, and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide Torts by Michael Jones, 4th Edn., p. 267).

25. As pointed out by Clerk and Lindsell (see Torts, 14th Edn.):

"The fault principle has shortcomings. The very idea suggests that compensation is a form of punishment for wrongdoing, which not only has the tendency to make tort overlap with criminal law, but also and more regrettably, implies that a wrongdoer should only be answerable to the extent of his fault. This is unjust when a wholly innocent victim sustains catastrophic harm through some trivial fault, and is left virtually without compensation."

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37. In India the landmark Constitution Bench decision of the Supreme Court in M.C. Mehta v. Union of India [(1987) 1 SCC 395 : 1987 SCC (L&S) 37 : AIR 1987 SC 1086] has gone much further than Rylands v. Fletcher [(1868) LR 3 HL 330 : (1861-73) All ER Rep 1] in imposing strict liability. The Court observed: (M.C. Mehta case [(1987) 1 SCC 395 : 1987 SCC (L&S) 37 : AIR 1987 SC 1086] , SCC p. 421, para 31)

> *"31. … If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit,*

> *the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads."*
>
> *xxxx xxxx xxxx*
>
> *40. It is true that attempts to apply the principle of Rylands v. Fletcher against public bodies have not on the whole succeeded vide Administrative Law by P.P. Craig, 2nd Edn., p. 446, mainly because of the idea that a body which acts not for its own profit but for the benefit of the community should not be liable. However, in our opinion, this idea is based on a misconception. Strict liability has no element of moral censure. It is because such public bodies benefit the community that it is unfair to leave the result of a non-negligent accident to lie fortuitously on a particular individual rather than to spread it among the community generally.*
>
> *xxxx xxxx xxxx"*

20. In view of above, this Courts finds that the Lower Appellate Court erred in pegging down the entitlement of the claims to 50% holding Yashpal to be a contributory of the negligence.

21. In the issues related to construction of bridges etc., wherever the bridges are constructed by the State, the State has to be fully aware of the apprehended threats. State can not afford to be careless. The State has to be held liable invoking doctrine of strict liability. In the principle of strict liability, there is no place for the element of contributory negligence.

22. In view of above, the impugned judgment and decree passed by the Lower Appellate Court is set aside and that passed by the Trial Court is

upheld. Resultantly, the appeal bearing RSA No.2068 of 2023 stands allowed and the appeal bearing RSA No.2908 of 2022 is ordered to be dismissed.

23. Pending application(s), if any, shall also stand disposed off.

24. Photocopy of this order be placed on file of the connected case.

(PANKAJ JAIN)
JUDGE

February 11, 2025
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No