

A VADODARA MUNICIPAL CORPORATION  
v.  
PURSHOTTAM V. MURJANI AND ORS.  
(Civil Appeal Nos. 3594-3611 of 2010)

B SEPTEMBER 10, 2014

[V. GOPALA GOWDA AND  
ADARSH KUMAR GOEL, JJ.]

*Consumer Protection Act, 1986 - Deficiency in service - Compensation - Boat carrying 38 passengers as against the capacity of 22 passengers, capsized resulting in death of 22 passengers - Municipal Corporation supervised boating activities - Contractor took contract for plying the boat and took insurance policy - Claim for compensation - Corporation and contractor held jointly and severally liable by forums below - Insurance Company to pay Rs.20 lakhs for each accident-death but aggregate sum limited to Rs.80 lakhs - Interference with - Held: Not called for - Victims were consumers and the contractor was service provider - Passengers neither provided life saving jackets nor life guard deployed - Deficiency of service stood established - Also primary liability of the contractor established - Mere appointment of a contractor or employee did not absolve the Corporation of its liability to supervise the boating activities - Bombay Provincial Municipal Corporation Act, 1949 - ss. 62, 63 and 66.*

Dismissing the appeals, the Court

**HELD: 1.1 The finding of negligence concurrently recorded by the State Commission and the National Commission does not call for any interference. Primary liability of the contractor stands established. The victims were consumers and the contractor was service provider. Deficiency of service stood established. The Insurance Company having issued policy covering loss to the**

extent of Rs.20 lakhs per accident with Rs.80 lakhs as maximum in one year, could not avoid its responsibility. [Para 16] [818-D-F]

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1.2 The activity in question was covered by the statutory duty of the Corporation u/ss. 62, 63, 66 of the Bombay Provincial Municipal Corporation Act, 1949. Mere appointment of a contractor or employee did not absolve the Corporation of its liability to supervise the boating activities particularly when there are express stipulations in the contract entered into with the contractor. The Corporation was not only discharging its statutory duties but also was acting as service provider to the passengers through its agent. The Corporation had a duty of care, when activity of plying boat is inherently dangerous and there is clear foreseeability of such occurrence unless precautions are taken like providing life saving jackets.[Para 17] [818-H; 819-A-C]

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1.3 There is a need for a comprehensive legislation dealing with tortious liability of the State and its instrumentalities in such cases for certainty on the subject. The Law Commission is requested to look into the matter and take such steps as may be found necessary. [Para 19] [821-C, D]

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*Rajasthan State Road Transport Corporation vs. Kailash Nath Kothari* 1997 (3) Suppl. SCR 724:(1997) 7 SCC 481; *Motor Owner's Insurance Co. Ltd. vs. Jadavji Keshavji Modi* 1982 (1) SCR 860:(1981) 4 SCC 660; *Ravneet Singh Bagga vs. KLM Royal Dutch Airlines & Anr.* 1999 (4) Suppl. SCR 320:(2000) 1 SCC 66; *Municipal Corporation of Delhi vs. Uphaar Tragedy Victims Association & Ors.* 2011 (16) SCR 1:(2011) 14 SCC 481-referred to.

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**Case Law Reference:**

1997 (3) Suppl. SCR 724 Referred to Para 5

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A	1982 (1) SCR 860	Referred to	Para 6
	1999 (4) Suppl. SCR 320	Referred to	Para 6
	2011 (16) SCR 1	Referred to	Para 18

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.3594-3611 of 2010.

From the Judgment and Order dated 02.11.2006 passed by the National Consumer Disputes Redressal Commission in first Appeal No. 464 of 2002 and 61 to 77 of 2004.

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C.A. Nos. 3630, 3631, 3647, 3632, 3633, 3634, 3635, 3636, 3638, 3646, 3639, 3640, 3641, 3642, 3643, 3644, 3645, 3648 and 3612-3629 of 2010.

D R.S. Suri, P.K. Seth Manjeet Chawla, Avinash Kumar, Pallavi Tayal, Tanuj Bhushan (for Suresh A. Shroff & Co.) and Chanchal Kumar Ganguli, Tabinda Syed, K.L. Janjani for the appearing parties.

E The Judgment of the Court was delivered by

F **ADARSH KUMAR GOEL, J.** 1. These appeals have been preferred against the Judgment of the National Consumer Disputes Redressal Commission (for short "NCDRC") dated 2nd November, 2006 in F.A. Nos.464/2002 and 61 to 77 of 2004 by the Vadodara Municipal Corporation (for short "the Corporation"), the Oriental Insurance Company Ltd. (for short "the Insurance Company") and the proprietor of Ripple Aqua Sports (hereinafter referred to as "the Contractor") against the  
G award of compensation for the death of 22 persons by drowning in Sursagar Lake at Vadodara while riding the boat, on account of negligence in plying the boat.

H 2. Sursagar Lake is under the control and management of the Corporation which has been plying boats for joy rides

and boating club. During the period in question, the contract for plying the boats was given to Ripple Aqua Sports vide licence agreement dated 26th September, 1992 for managing the affairs of the Boating Club at the Lake for purposes of entertainment. The agreement, inter alia, provided that the facility of boating was to be given to the public. It was necessary that the contractor shall be taking insurance policies to cover the risk liability of all persons using the equipment of the club. The Corporation had the right to supervise the boating club. Accordingly, the Contractor took insurance policy dated 1st November, 1992. On 11th August, 1993, against the capacity of 20 persons, 38 passengers were allowed to ride in the boat which capsized resulting in the death of 22 passengers.

3. The victims approached the State Commission on 30th March, 1994 and around under the provisions of Consumer Protection Act, 1986 claiming compensation alleging deficiency of service on the part of the Contractor and the Corporation. The victims claimed that the insurance policy covered the claim to the extent of Rs.20 lakhs per passenger with maximum of Rs.80 lakh in one year. Under the Bombay Provincial Municipal Corporation Act, 1949, the Corporation had the duty to maintain the safety of the passengers and in case of negligence, the Corporation had the tortious liability under the law. The Corporation was also liable for tortious acts of the Contractor. The passengers had taken tickets for the boat ride but on account of deficiency in service the passengers drowned on capsizing of the boat which was overloaded. The occurrence took place on account of negligence of the contractor as well as failure of the Corporation to exercise due care. No life guards were provided, no life saving jackets were provided and if suitable safety measures would have been taken, the lives of the victims could be saved.

4. The Insurance Company contested the case and submitted that as per the insurance policy given, the liability was limited to Rs.1 lakh per person. Stand of the Corporation was

A that complainants were not consumers and had remedy under the Indian Vessels Act, 1917. The Contractor was independent licensee without any control of the Corporation. The stand of the Contractor was that it was not liable as the claimants were not consumers and the liability was of the Corporation. The  
 B Insurance Company also opposed the claim and also submitted that its liability did not exceed Rs.20 lakhs.

5. The State Commission allowed the claims. It held that even a public authority exercising statutory power was not exempt from liability for negligent actions. When the Corporation exercised control over the Contractor, it was vicariously responsible for the negligence of the Contractor. Reliance was placed on *Rajasthan State Road Transport Corporation vs. Kailash Nath Kothari*<sup>1</sup> holding the employer to be responsible vicariously.  
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6. As regards liability of the Insurance Company, it was held that its liability under the policy was Rs.20 lakhs for one incident which meant one death in view of *Motor Owner's Insurance Co. Ltd. vs. Jadavji Keshavji Modi*<sup>2</sup>. The policy was covered by Public Liability Insurance Act, 1991. It was also held that Contractor could not escape its liability in the given circumstances when deficiency in service was patent in view of violation of Indian Vessels Act, 1917. Negligence in operating the boat amounted to deficiency in service as held in *Ravneet Singh Bagga vs. KLM Royal Dutch Airlines & Anr*<sup>3</sup>.  
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7. Accordingly, the State Commission held the Aqua Sports and the Corporation to be jointly and severely liable. The State Commission awarded total compensation of Rs.30,18,900/- with interest @ 10% per annum from the date of the incident till payment. The State Commission determined the quantum of compensation ranging from Rs.50,000/- to  
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1. (1997) 7 SCC 481.

2. (1981) 4 SCC 660.

H 3. (2000) 1 SCC 66.

Rs.10,76,000/- in respect of claims for death of 22 passengers. A

8. The decision of the State Commission has been upheld by the NCDRC with the enhancement in quantum of compensation in some of the cases keeping in mind principles for determining compensation under the Motor Vehicles Act, 1988. B

9. Affirming the finding of the State Commission, the NCDRC held:-

*"(i) Contractor had the primary liability to compensate the victims as it was responsible for the catastrophe in question;* C

*(ii) The Corporation had vicarious liability for the negligence. Plying boat was inherently dangerous activity. Even for its statutory functions, liability for negligence was attracted on the principle laid down in Rajkot Municipal vs. Manjuben Jayantilal Nakum, (1997) 9 SCC 552. The Corporation failed to perform its duty of supervision undertaken under the agreement with the Contractor;* D

*(iii) The Insurance Company was liable upto Rs.20 lakhs per accident (per death) subject to maximum of Rs.80 lakhs as per policy. Variations in policy could not be allowed in view of United India Insurance Company Ltd. vs. M.J.K. Corporation, (1997) 7 SCC 481 and United India Insurance Company Ltd. vs. Pushpalaya Printers, (2004) 3 SCC 694 and Life Insurance Corporation of India and ors. vs. Smt. Asha Goel and anr., (2001) 2 SCC 160.* E

*(iv) Insurance Company was bound to act as per Insurance Regulatory and Development Authority Acts of 1999 and 2002 regulations framed thereunder and also Public Liability Act, 1991."* F

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A 10. Concluding part of the judgment of the NCDRC is as follows:-

*"In the result, it is held that:*

B *(i) the Ripple Aqua Sports and the Vadodara Municipal Corporation are jointly and severally liable to pay the compensation to the Complainants as awarded;*

C *(ii) the Vadodara Municipal Corporation is directed to pay the balance of compensation (that is, after deducting the amount paid) to the Complainants in each case within a period of eight weeks from the date of the Order. It would be open to the Corporation to recover the same from the Ripple Aqua Sports;*

D *(iii) the Insurance Company is liable to pay Rs.20 lakhs for each accident, namely, each death, but in aggregate the sum is limited to Rs.80 lakhs. Hence, the Insurance Company shall reimburse, in all, Rs. 80 lakhs to the Vadodara Municipal Corporation; and,*

E *(iv) the rest of the order passed by the State Commission directing payment of interest at the rate of 10% p.a. from the date of the incident, i.e. from 11.8.1993 till the date of payment of compensation is confirmed.*

F *With these modifications the First Appeal Nos.464 of 2002 and First Appeal Nos.464 of 2002 and First Appeal Nos.61 to 77 of 2004 filed by the Vadodara Municipal Corporation are disposed of accordingly. Considering the facts, there shall be no order as to costs.*

G *First Appeal Nos. 197 of 2003 and First Appeal Nos.210 to 226 of 2003 filed by the Ripple Aqua Sports are disposed of accordingly. There shall be no order as to costs.*

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Cross-Appeals for enhancement:

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*The Appeals filed by the Complainants in First Appeal Nos.488 of 2002; 289 of 2004;-290 of 2004; 292 of 2004; 295 of 2004 and 296 of 2004 are dismissed. There shall be no order as to costs.*

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*The First Appeal Nos.288 of 2004; 291 of 2004; 294 of 2004; 297 of 2004; 299 of 2004; 293 of 2004; 298 of 2004, and 300 of 2004 filed by the complaints are partly allowed. The order passed by the State Commission is modified as under:-*

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*It is held that the complainants are entitled to have compensation of:-*

*(i) Rs.1 lakh in each Appeal Nos.288 of 2004, 291 of 2004; and 294 of 2004;*

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*(ii) Rs.1,25,000/- in each Appeal Nos.297 of 2004 and 299 of 2004;*

*(iii) Rs.1,50,000/- in each Appeal Nos.293 of 2004; 298 of 2004; and 300 of 2004."*

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11. We have heard learned counsel for the parties.

12. Learned counsel for the Corporation submitted that the Corporation was not a service provider and had no privy contract with the victims. It was only facilitating the plying of boating and the liability was of the contractor. As per the licence agreement dated 26th September, 1992, control and responsibility for the boating activities was completely of the contractor. The Corporation had no direct control over the contractor or its employees.

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13. Learned counsel for the Insurance Company submitted that its liability was limited to Rs.1 lakh as per policy issued

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A on 1st December, 1992 and the policy dated 1st November, 1992 could not be taken into account.

B 14. Learned counsel for the Contractor, submitted that it was not responsible for the accident and liability was of the Manager individually or of the Corporation for whom the boat was being plied.

15. Learned counsel for the victims supported the impugned order.

C 16. On due consideration, we do not find any ground to interfere. It is not in dispute that the boat was carrying 38 passengers as against the capacity of 22 passengers. Neither any life guards were deployed nor any life saving jackets were provided to the passengers. The finding of negligence concurrently recorded by the State Commission and the D NCDRC does not call for any interference. Primary liability of the contractor stands established. The victims were consumers and the contractor was service provider. Deficiency of service stood established. The stand of the Insurance Company based on second policy dated 1st December, 1992 limiting its liability is untenable. Having issued policy dated 1st November, 1992 covering loss to the extent of Rs.20 lakhs per accident with E Rs.80 lakhs as maximum in one year, the Insurance Company could not avoid its responsibility, as rightly held concurrently by the State Commission and the NCRDC. Risk was required to be statutorily covered under the Public Liability Insurance Act, F 1991. The Insurance Company was bound by the The Insurance Regulatory and Development Authority (Protection of Policyholders' Interest) Regulation, 2002 framed under the Insurance Regulatory and Development Authority Act, 1999 and the law laid down in M.J.K. Corporation, Pushpalaya Printers and G Asha Goel (supra), rightly referred to by the NCDRC in its order.

H 17. We do not find any ground to exonerate the Corporation. Admittedly, the activity in question was covered

by the statutory duty of the Corporation under Sections 62, 63 and 66 of the Bombay Provincial Municipal Corporation Act, 1949. Mere appointment of a contractor or employee did not absolve the Corporation of its liability to supervise the boating activities particularly when there are express stipulations in the contract entered into with the contractor. The Corporation was not only discharging its statutory duties but also was acting as service provider to the passengers through its agent. The Corporation had a duty of care, when activity of plying boat is inherently dangerous and there is clear foreseeability of such occurrence unless precautions are taken like providing life saving jackets.

18. In *Municipal Corporation of Delhi vs. Uphaar Tragedy Victims Association and Ors.*<sup>4</sup>, concept of negligence or breach of duty to take care in Tort law as against breach of duty in exercising statutory duty in public law was gone into with reference to developments in different jurisdictions. It was observed that archaic principle of State immunity which was based on assumption of State being efficient, sincere and dignified was giving way to protection of liberty, equality and rule of law. Applying the test of proximity of relationship, reasonable foreseeability and justness of claim, liability of a public authority could be fixed. After noticing development of law world over, it was observed:-

*"109. Need for a comprehensive legislation dealing with tortious liability of the State and its instrumentalities has been highlighted by this Court and the academic world on various occasions and it is high time that we develop a sophisticated jurisprudence of public law liability. Due to lack of legislation, the courts dealing with the cases of tortious claims against the State and its officials are not following a uniform pattern while deciding those claims, and this at times leads to undesirable consequences and arbitrary fixation of compensation amount.*

A 110. *The Government of India on the recommendations of the First Law Commission introduced two Bills on the government liability in torts in the years 1965-1967 in the Lok Sabha but those Bills lapsed. In Kasturi Lal case, AIR 1965 SC 1039, this Court has highlighted the need for a comprehensive legislation which was reiterated by this Court in various subsequent decisions as well.*

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C 111. *Public authorities are now made liable in damages in UK under the Human Rights Act, 1998. Section 6 of the Human Rights Act, 1998 makes a public authority liable for damages if it is found to have committed breach of human rights. The Court of Appeal in England in Anufrijeva v. Southwark London Borough Council, 2004 QB 1124 : (2004) 2 WLR 603 : (2004) 1 All ER 833 (CA), attempted to answer certain important questions as to how damages should be awarded for breach of human rights and how should damages be assessed. Further, such claims are also dealt by Ombudsmen created by various statutes: they are independent and impartial officials, who investigate complaints of the citizens in cases of maladministration. Experience shows that majority of the Ombudsmen's recommendations are complied with in practice, though they are not enforceable in courts. The European Court of Justice has developed a sophisticated jurisprudence concerning liability in damages regarding liability of public bodies for the loss caused by administrative acts.*

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G 112. *We have highlighted all these facts only to indicate that rapid changes are taking place all over the world to uphold the rights of the citizens against the wrong committed by statutory authorities and local bodies. Despite the concern shown by this Court, it is unfortunate that no legislation has been enacted to deal with such situations. We hope and trust that utmost attention would be given by the legislature for bringing in appropriate*

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*legislation to deal with claims in public law for violation of fundamental rights guaranteed to the citizens, at the hands of the State and its officials."* " A

19. In view of above discussion, while upholding the liability of the Corporation, we reiterate that not only Constitutional Courts have to, in suitable cases, uphold claims arising out of loss of life or liberty on account of violation of statutory duties of public authorities, in private law remedies, just and fair claims of citizens against public bodies have to be upheld and compensation awarded in Tort. Where activity of a public body is hazardous, highest degree of care is expected and breach of such duty is actionable. This obligation is also referable to Article 21. We reiterate the need for a comprehensive legislation dealing with tortious liability of the State and its instrumentalities in such cases for certainty on the subject. We request the Law Commission to look into the matter and take such steps as may be found necessary. B  
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20. Accordingly, we do not find any merit in the appeals filed by the contractor, the Corporation and the Insurance Company against the award of compensation by the State Commission as affirmed/modified by the NCDRC. The appeals are accordingly dismissed. There will, however, be no order as to costs. A copy of this order be forwarded to the Law Commission for further necessary action. E

Nidhi Jain

Appeals dismissed. F