

On 18 February 2019 a news item under the caption ‘মাটি চাপা পড়ে মৃত ৩ বালিকা’ was published by the Ananda Bazar Patrika, a Bengali daily newspaper, reporting that Puja (10), Silpa (13) and Rhea (9) had died whereas Krishna (5) and Brishti (6) were struggling with death in the hospital consequent to caving in of loose earth borrowed from an adjacent pit excavated by the side of the road by the contractor engaged by the state. Suo-Motu cognizance was taken by the Commission. The Superintendent of Police Bankura was directed to enquire into the matter and to file a report by 29 March 2019.

An interim report dated 30th March 2019 was filed by the SDPO Bishnupur confirming that on 17 February 2019 the aforesaid three children were declared brought dead by the hospital. It was further confirmed that the other two children were referred to BS MC Hospital, Bankura. Bishnupur police station U/D case numbers 19, 20 and 21 all dated 17 February 2019 were started. On the basis of a complaint lodged by the village police, Patrasayer PS case number 23/2019 dated 17 February 2019 inter alia under section 304A IPC was initiated.

As regards the incident it was reported that “the designated contractor dug a pit measuring 80 feet x 8 feet x 8 feet on the left side of the existing village road near the house of the victims. For the purpose of construction of road the earth was excavated. There was no barricade encircling the pit. The innocent children entered the pit for fun. The cause of death according to the post-mortem report in the U.D. case number 19 was “due to shock in the case of head injury ante-mortem and accidental in nature and in the U.D. case number 20 and 21 it was “due to hemorrhage shock in case of multiple injury ante-mortem and accidental in nature”.

The final report dated 11 March 2020 was submitted stating that Meghnath Kapri was appointed contractor by the Executive Engineer, WBSRDA, Bishnupur division for the construction of road in Patrasayer where the fatal accident took place. It was also reported that “during the investigation a prima facie charge under section 304A/337/338 IPC have been well established against accused Meghnath Kapri.....Today IO received the order of superiors and submitted

the charge sheet vide Patrasayer PS charge sheet number 35/20 dated 11 March 2020 under section 304A/337/338 IPC against the above accused person.”

From the aforesaid narration of facts and circumstances of the case it appears that due to gross negligence of the contractor, engaged by the state for the purpose of construction of road, the pit was excavated by the side of the road accessible to everyone including children. The officials of WBSRDA were also oblivious of the fact that such a pit could well turn into a death trap for the children and the unwary. The fact that they allowed the contractor to excavate the pit of such magnitude without any precautionary measure is by itself a pointer to show lack of vigilance on their part. If the pit was indispensable the officers including the contractor should have taken precautionary steps to avoid any accident. They owed a duty in that regard which they failed to discharge. Therefore negligence, both on the part of the officers and the contractor, is writ large which claimed three lives and endangered two more.

As regards liability of the state for Tortious act or acts of its servants and agents law was declared by the Supreme Court in the case of state of Rajasthan versus Vidhyawati reported in A IR 1962 Supreme Court 933 as follows:-

“Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such, as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorizing or instigating one, and that he could not be sued in his own courts. In India, ever since the time of East India Company, the sovereign has been held liable to be sued in tort or in contract, and the common law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for the tortious act of its servant. This Court has deliberately departed from the common law rule

that a civil servant cannot maintain a suit against the Crown. In the case of *State of Bihar v. Abdul Majid* [(1954) SCR 786] this Court has recognized the right of a government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown, based on common law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause of action in this case arose after the coming into effect of the Constitution, in our opinion, it would be only recognizing the old established rule, going back to more than 100 years at least, if we uphold the various liability of the State. Article 300 of the Constitution itself has saved the right of Parliament or the legislature of a State to enact such law as it may think fit and proper in this behalf. But so long as the legislature has not expressed its intention to the contrary, it must be held that the law is what it has been ever since the days of East India Company."

In the case of *Kumari (Smt) versus State of TN* reported in (1992) 2 Supreme Court cases 223 what had happened was that a six years old child of Kumari died as a result of falling in a 10 feet deep sewerage tank in the city of Madras. The tank had been left open. Kumari applied under article 226 and claimed compensation. The High Court dismissed the petition. In an appeal the Supreme Court in allowing the prayer held as follows:-

"Six years old son of the appellant died as a result of falling in a ten feet deep sewerage tank in the city of Madras. The tank was not covered with a lid and was left open. The appellant filed a petition under Article 226 of the Constitution of India before the Madras High Court seeking a writ in the nature of mandamus directing the respondents to pay Rs 50,000 as compensation to the appellant. The High Court dismissed the writ petition on the ground that in writ jurisdiction it was not possible to determine as to which of the respondents was negligent in leaving the sewerage tank uncovered.

In the facts and circumstances of this case we set aside the High Court judgment and direct that respondent 1, the State of Tamil Nadu shall pay to the appellant a sum of Rs 50,000 (Rupees fifty thousand) with interest at 12 per cent per annum from January 1, 1990 till the date of payment. The amount shall be paid within six weeks from today. It will be open to the State of Tamil Nadu to take

appropriate proceedings to claim the said amount or any part thereof from any of the respondents or any other authority which might be responsible for keeping the sewerage tank open. The claim, if made, will be decided in accordance with law. The appeal is allowed in the above terms. There will be no order as to costs."

In the light of the law declared by the Supreme Court we are of the opinion that state should pay compensation to the parents of the deceased children as well as the parents of the children who suffered injuries. We as such make the following recommendations:-

a) a sum of ₹ 2 lakhs be paid to either of the parents of each of the aforesaid deceased victim;

b) a sum of ₹ 50,000 each be paid to either of the parents of the aforesaid victims who suffered injury;

c) appropriate directions be issued prohibiting excavation of pits, which may become potential danger to the unwary and the children, without proper safety arrangements and

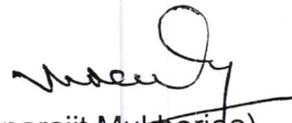
d) it would be open to the state to recover the amount of compensation in accordance with law.

The joint secretary is directed to authenticate the recommendation and to send the same to the Chief Secretary to the Government of West Bengal. Action taken report be furnished within 15th December,2020

Ld. Registrar is directed to upload a copy of the aforesaid recommendation in the Website of the Commission.



(Justice Girish Chandra Gupta)
Chairperson



(Naparajit Mukherjee)
Member (A)

Dt: 15th October,2020.