

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP.No.284/2008

Date of decision: 12th November, 2009

HEAD OF DEPARTMENT, AIR FORCE

STATION AMLA & ANR

..... Appellants

Through : None.

versus

RAM KUMAR GIRI THR. LRS

..... Respondents

Through : Mr. Neeraj Aarora, Adv.

Mr. V.P. Choudhary, Sr. Adv.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.4,74,488/- has been awarded to the claimants/respondents No.1 to 5.

2. On 22nd May, 1999 at about 6:30 am, the deceased, Ram Kumar Giri along with his mother, wife and children, was going from Delhi to Shani Dev Mandir, Kokla by Tata Sumo bearing No.HR-26H-2105 and when they reached G.T. Road, Village Kulsipur, Palwal (Faridabad), the

Air Force truck bearing No.BA No.89D 84861 came from the opposite direction on the wrong side of the road and hit the Tata Sumo resulting in grievous injuries to the deceased.

3. The deceased was sitting on the front seat of Tata Sumo besides the driver and he suffered fracture in both legs and left hand as well as injuries on the head and neck. The deceased suffered 74% disability due to the injuries suffered by him in the accident which resulted in his death on 31st October, 2006.

4. The deceased initially filed the claim petition for compensation in respect of injuries suffered by him. However, after his death, the deceased was substituted by his wife, three minor children and father who amended the claim petition and claimed the compensation for the injuries suffered by the deceased as well as the compensation arising out of the death of the deceased.

5. The offending vehicle was owned by Air Force and the claim petition was filed against the driver and Air Force as the owner of the offending vehicle.

6. Separate written statements were filed by the driver and owner of the offending vehicle before the learned Tribunal.

7. The driver of the offending vehicle admitted the accident. However, the driver denied that the accident occurred due to his rash and negligent driving. It was submitted by the driver in the written statement that he changed the vehicle lane due to blockage of road at different places. It was further submitted that the Tata Sumo was being driven rashly and negligently at a very high speed and the accident occurred due to the rash and negligent driving of Tata Sumo.

8. In the separate written statement, the Air Force also admitted that their driver changed the lane and came on the wrong side of the road due to the blockage of road at three different places. It was further submitted that the driver had no other alternative but to come on the wrong side of the road due to blockage of the road and the same was done by other vehicles plying on the road. The relevant portion of para-1 of the reply on merits is reproduced hereunder:-

“The allegations leveled by the petitioners that Shri Ashok Kumar was driving the service vehicle negligently and rashly

are absolutely false and strongly denied. The fact is that Shri Ashok Kumar had changed the vehicle lane of his service transport from main Palwal road to Mathura road due to the blockage of road at three different places and therefore Shri Ashok Kumar was not intentionally driving the service vehicle on wrong side. The circumstances developed due to blockage of road had made him to follow the wrong side, since he did not have any other alternative. The same was being done by other vehicles plying on that road. It is further submitted that, infact, TATA Sumo was being driven rashly and its driver did not take due precautions to avoid the accident. The passengers of TATA Sumo were immediately taken to nearby hospital and they are promptly attended to."

9. The deceased appeared in the witness box as PW-1 and deposed that he and his family were going from Delhi to Shani Dev Mandir, Kokla by Tata Sumo bearing No.HR-26H-2105 and when they reached Palwal, a military truck bearing BA No.89D 84861 came from front side at a high speed in a rash and negligent manner and hit the Tata Sumo due to which the deceased and his mother received injuries. PW-1 further deposed that he became unconscious after the accident and was taken in an ambulance to General Hospital where he regained consciousness and Police recorded his statement. PW-1 was thereafter referred to St. Stephen's Hospital, Delhi on the same day. The witness

suffered fracture in both legs and left hand and both the bones of the thigh were broken apart from injuries on neck and head. PW-1 remained hospitalized in private ward for 1½ months and stated to have incurred Rs.5,00,000/- on his treatment, conveyance and special diet. PW1 was confined to bed and one attendant remained with him whole day. PW1 proved the treatment record - Ex.PW1/F to Ex.PW1/Z and Ex.PW1/A1 to Ex.PW1/44. PW1 also proved the certified copies of the criminal record Ex.PW1/A to Ex.PW1/E. PW1 proved the documents relating to the treatment and the bills for purchase of medicines as Ex.P-1 to Ex.P-36.

10. In cross-examination, PW-1 was asked as to how many persons were travelling in Tata Sumo to which PW-1 replied that 6-7 persons, namely, the deceased, his mother, wife, two daughters and son were travelling in the vehicle and the deceased was sitting on the front seat. The witness denied that there was a traffic block on the other side of the road and the entire traffic was diverted on the right side. PW-1 further stated in cross-examination that the speed of Tata Sumo was

about 20 kms per hour at the time of the accident. The witness was also cross-examined about his health, occupation and income.

11. The witness from St. Stephen's Hospital appeared as PW-2 and proved the treatment record - Ex.PW2/1 to Ex.PW2/5. The witness also proved the attested copies of medical bills as Ex.PW2/6 collectively. PW-2 also deposed that the deceased was admitted in the St. Stephen's Hospital five times. PW-2 was not at all cross-examined by the appellants despite opportunity given.

12. The appellants produced four witnesses. The driver of the offending vehicle appeared as R1W1 and admitted that he changed the vehicle lane due to blockage of the road at three different places as he did not have any other alternative. R1W1 further admitted that he was following other vehicles which were using the wrong path due to blockage. Paras 3 and 4 of the examination-in-chief of R1W1 are reproduced hereunder:-

"3. That on the day of accident, the deponent had changed the vehicle lane from his service transport from main Palwal Road to Mathura Road due to the blockage of

road at three different places as he did not have any other alternative.

4. That he was driving very cautiously and normal speed and was following the other vehicles, which were using alternative path due to the blockage.”

13. The Sqn. Ldr., V.G. Nadkarni appeared as R2W1 and also admitted that the driver, Ashok Kumar changed the lane of his vehicle due to blockage of the road and was following other vehicles which were also using alternative path at the relevant time due to blockage. R2W1 placed on record the copy of the Departmental Inquiry Proceedings – Ex.R2W1/1. This witness also imputed the negligence to the driver of Tata Sumo. Para 6 and 7 of the affidavit of R2W1 are relevant and are reproduced hereunder:-

“6. The deponent says that on 22.05.1999 the respondent no.01 Ashok Kumar had to change the vehicle lane of his service transport from main Palwal road to Mathura road, due to blockage of the road, which was blocked due to an accident.

7. The deponent says that the respondent no. 01 was driving very cautiously and normal speed and was following the other vehicles, the other vehicles were also using alternate path on the relevant day due to blockage.”

In cross-examination, R2W1 admitted that he had no personal knowledge of the facts of the case and came to know of the facts only on the perusal of the file of the investigation. R2W1 further admitted that the deceased was not joined in the departmental enquiry conducted by Air Force.

14. Umed Singh appeared as R2W2. R2W2 was escorting the offending vehicle at the time of the accident. R2W2 admitted that the offending vehicle came on wrong side of the road as other vehicles were also using alternative path due to blockage and the offending vehicle was following the other vehicles on a very normal speed. R2W2 also imputed the negligence on the Tata Sumo. Para 3 of the affidavit of R2W2 is reproduced hereunder:-

"3. That the said service transport was taken to right side of divider because the left way was blocked due to accident. The other vehicles were also using alternate path due to the blockage and we were following the other vehicles on a very normal speed as around 10 KM/h."

15. Subedar Nathi Ram appeared in the witness box as R2W3 and deposed that a wheat loaded truck was lying in front of his mill due to

which the transport was diverted from Palwal Road to Mathura Road and the vehicles were using the alternative road due to blockage of road. In cross-examination, R2W3 admitted that he did not witness the accident and he went to the accident site after receiving the information. R2W3 did not go to the Police Station and was not examined by the Police.

16. The learned Tribunal held that the accident in question occurred due to the rash and negligent driving of the Air Force vehicle by its driver.

17. The learned counsel for the appellant has challenged the finding of the rash and negligent driving of the offending vehicle by its driver and has submitted that the accident occurred due to the rash and negligent driving of Tata Sumo in which the deceased was travelling. There is no challenge to the quantum of compensation computed by the learned Tribunal. The respondents have filed counter claim to seek the enhancement of the award amount.

18. The learned counsel for the appellant has submitted that there was a convoy of three vehicles of Air Force and there was obstruction on the national highway near Palwal at three places due to which the road was blocked and, therefore, the convoy came on the wrong side of the road as there were other vehicles also which had come on the wrong side of the road. There was a road divider and two vehicles of the convoy came on the correct side of the road after travelling about 1/2 km on the wrong side but the third vehicle of the convoy met with an accident with a Tata Sumo. The learned counsel for the appellant further submits that the Tata Sumo was overtaking two other vehicles and in the process met with an accident with the Air Force convoy.

19. The offending Air Force truck was on the wrong side of the road at the time of the accident which is admitted by the driver of the Air Force truck in his written statement as well as in his testimony as R1W1. The blockade of road on the correct side and other vehicles having come on the wrong side of the road is no justification for coming on the wrong side of the road. Merely because there was blockade on the

correct side and other vehicles had come to wrong side of the road, the driver of the Air Force truck did not have the right to come on the wrong side of the road. Admittedly, there was no traffic policeman on the site who diverted the traffic on the wrong side. The driver of the Air Force truck neither put on the head lights/emergency lights nor blew the horn so as to give an indication to the traffic coming from the opposite direction. The driver of the Air Force truck was clearly rash and negligent. The finding of rash and negligence of the Air Force truck is, therefore, upheld.

20. The second contention of learned counsel for the appellant is that the driver of the Air Force vehicle was performing the sovereign function and, therefore, Air Force is not liable on the ground of sovereign immunity. The learned counsel refers to and relies upon the following judgments in support of the plea of doctrine of sovereign immunity:-

- (i) Secretary of State vs. A. Cockcraft, AIR 1915 Madras 993.

- (ii) Kasturi Lal Ralia Ram Jain vs. State of U.P., AIR 1965 SC 1039.
- (iii) N. Nagendra Rao & Co. vs. State of A.P., AIR 1994 SC 2663.
- (iv) Bakshi Amrik Singh vs. Union of India, 1974 ACJ 105 (P&H).
- (v) Thangarajan vs. Union of India, AIR 1975 Madras 32.
- (vi) Shakuntala Devi vs. Union of India, 1976 ACJ 97.

21. The learned counsel for the claimants submit that:-

- (i) The appellant did not raise the plea of sovereign immunity as a defence before the learned Tribunal in its written statement.
- (ii) No issue was, therefore, framed by the learned Tribunal on the issue of sovereign immunity.
- (iii) No evidence was even led before the learned Tribunal on the issue of sovereign immunity.
- (iv) The plea of sovereign immunity has been raised for the first time in the appeal before this Court.

- (v) The doctrine of sovereign immunity is not applicable to the claim for compensation under the Motor Vehicles Act.
- (vi) The Motor Vehicles Act is a special law to govern the payment of compensation to the victims of the road accident and it covers the vehicles owned by the Central Government used for defence purposes and no exception has been carved out in the law with respect to the tortious liability arising out of use of Government vehicle performing sovereign functions.

22. Mr. V.P. Choudhary, Senior Advocate as amicus curiae and counsel for the claimants submits that the doctrine of sovereign immunity pleaded by the appellant is not applicable to the claim for compensation under the Motor Vehicles Act, 1988. Mr. Choudhary submits that the Motor Vehicles Act, 1988 is a special law to govern the payment of compensation to the victims of the road accidents and it covers the vehicles owned by the Central Government used for defence purposes and no exception has been carved out in the law with respect

to the tortuous liability arising out of the use of the government vehicle for defence purposes. Mr. Choudhary has referred to the following provisions of the Motor Vehicles Act, 1988 in the regard:-

- (i) Section 2(30) defines the "owner" of a motor vehicle and it includes all vehicles including the vehicles owned by the Air Force.
- (ii) Section 2(20) defines the "licencing authority" and Section 2(37) defines the "registering authority", which are empowered to register and issue licences even in respect of Air Force vehicles.
- (iii) Section 18 provides that the authority prescribed by the Central Government may issue driving licence to drive motor vehicles which are under the exclusive control of the Central Government and are used for government purposes relating to the defence of the country and unconnected with any commercial enterprise.
- (iv) Section 60 provides for registration of vehicles belonging to the Central Government and used for defence of the country.
- (v) Section 140(1) provides for payment of compensation on the principle of no fault liability on the owner of the motor vehicle.
- (vi) Section 144 provides that the provisions of Chapter X shall have effect notwithstanding anything contained in any other

provision of the Motor Vehicles Act or any other law for the time being in force.

- (vii) Section 146(2)&(3) provides that the Government may exempt the requirement of compulsory insurance in respect of Government vehicle provided that the fund is established and maintained for meeting any law arising out of the use of the government vehicle.
- (viii) Section 165 provides for constitution of the Motor Accident Claims Tribunal for the purpose of adjudicating the claims for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles.
- (ix) Section 168 provides the payment of the compensation by the insurer or owner or driver of the offending vehicle involved in the accident.

23. The learned amicus curiae and the counsel for the claimants have referred to and relied upon the following judgments:-

- (i) State of Rajasthan vs. Vidhyawati, AIR 1962 SC 933.
- (ii) Pushpa Thakur vs. Union of India, AIR 1986 SC 1199.
- (iii) Saheli, a Women's Resources Centre vs. Commissioner of Police, Delhi, AIR 1990 SC 513.
- (iv) N. Nagendra Rao and Co. vs. State of Andhra Pradesh, AIR 1994 SC 2663.

(v) Common Cause, a Registered Society vs. UOI, AIR 1999 SC 2979.

(vi) State of A.P. vs. Challa Ramkrishna Reddy, AIR 2000 SC 2083.

(vii) Usha Aggarwal vs. Union of India, AIR 1985 P&H 279.

(viii) Gurbachan Kaur vs. Union of India, 2002 ACJ 666 (PH).

(ix) State of Rajasthan vs. Shekhu, 2006 ACJ 1644 (Rajasthan HC).

24. Considering the important question of law involved in this case, Mr. Parag Tripathi, learned ASG was requested to examine the plea of sovereign immunity set up by the appellants and assist this Court. Mr. Parag Tripathi, appeared before this Court on 10th July, 2009 and submitted that the doctrine of sovereign immunity which is based on the maxim that 'King can do no wrong' has no place in Indian jurisprudence. Mr. Tripathi has made submissions on the law relating to sovereign immunity in India as well as in England, United States, Australia, Canada, Singapore, South Africa and Pakistan. Mr. Tripathi, learned ASG has referred to the following judgments:-

- (i) Peninsular and Oriental Steam Navigation Co.
- (ii) State of Rajasthan vs. Vidyawati, AIR 1962 SC 933.
- (iii) Kasturilal Ralia Ram Jain vs. State of Uttar Pradesh, AIR 1965 SC 1039, Pr.21 pg.1046.
- (iv) Pushpa Thakur vs. UOI & Anr., AIR 1986 SC 1199.
- (v) Nagendra Rao & Co. vs. State of Andhra Pradesh, (1994) 6 SCC 205.
- (vi) State of Andhra Pradesh vs. Challa Ramkrishna Reddy, AIR 2000 SC 2083.
- (vii) Dalehite v. United States, 346 US 15.
- (viii) Royster v. Cavey, 1947 KB 204.

25. The doctrine of sovereign immunity was considered by the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Vidhyawati** (supra). In that case, the driver of a Government jeep knocked down a pedestrian which resulted in his death. The legal representatives of the deceased sued the Government of Rajasthan and the driver for compensation for the tortious act of the driver. The suit

was decreed by the Trial Court and upheld by the High Court in appeal. The State of Rajasthan filed the appeal before the Hon'ble Supreme Court on the ground that it is not liable for the tortious act of its employees. The appeal was dismissed. The Hon'ble Supreme Court held that the rule of immunity in favour of Crown based on common law in the United Kingdom has disappeared from the land of its birth and it has no validity in our country after the Constitution. The Hon'ble Supreme Court further held that Article 300 of the Constitution has saved the right of Parliament to enact such law but no law has been enacted till now. The findings of the Hon'ble Supreme Court are as under:-

"We have not been shown any provision of law, statutory or otherwise, which would exonerate the Rajasthan Union from vicarious liability for the acts of its servant, analogous to the Common Law of England. It was impossible, by reason of the maxim "The King can do no wrong", to sue the Crown for the tortious act of its servant. But it was realised in the United Kingdom that that rule had become outmoded in the context of modern development in statecraft, and Parliament intervened by enacting the Crown Proceedings Act, 1947, which came into force

on January 1, 1948. Hence the very citadel of the absolute rule of immunity of the sovereign has now been blown up. Section 2(1) of the Act provides that the Crown shall be subject to all those liabilities, in tort, to which it would be subject if it were a private person of full age and capacity, in respect of torts committed by its servants or agents, subject to the other provisions of the Act. As already pointed out, the law applicable to India in respect of torts committed by a servant of the Government was very much in a advance of the Common law, before the enactment of the Crown Proceedings Act, 1947, which has revolutionised the law in the United Kingdom, also." (para 14)

"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 the East India Company, the sovereign has been held liable to be sue in tort or in contract, and the Common Law immunity never operated in India." (para 15)

"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 recognising the old established rule, going back to more than 100 years at least, if we upheld the vicarious liability of the State. Art. 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 the East India Company." (para 15)

26. The doctrine of sovereign immunity again came up for consideration before the Hon'ble Supreme Court in the case of **Pushpa Thakur vs. Union of India** (supra). In that case, the army truck rammed into another vehicle resulting in fracture of both legs and amputation of right leg of the victim. The driver of the military truck was found to be negligent. The principle of sovereign immunity of the State was rejected by the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the principle of sovereign immunity of State for the acts of its servants has no application in such cases and Union of India is clearly

liable to pay compensation to the victims for negligence of the driver of the military truck. It was held as under:-

“We are of the view that on the facts and circumstances of the case **the principle of sovereign immunity of the State for the acts of its servants has no application** and the High Court was in error in rejecting the claim of the appellant for compensation on that ground. It was a concurrent finding of fact arrived at by the Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as Tribunal) as well as the High Court that the driver of the military truck was negligent and that the accident resulting in the fracture of both the legs and amputation of the right leg of the appellant was caused as a result of such negligence. The Union of India was, therefore, clearly liable to pay compensation to the appellant for the negligence of the driver of the military truck.” (para 1)

27. In the case of **Saheli, a Women’s Resources Centre vs. Commissioner of Police** (supra), the Hon’ble Supreme Court following the judgment of **State of Rajasthan vs. Vidhyawati** (supra) held that the State was responsible for the tortious acts of its employees.

28. The doctrine of sovereign immunity again came up for consideration before the Hon’ble Supreme Court in the case of **N.**

Nagendra Rao and Co. vs. State of Andhra Pradesh (supra) where the

Hon'ble Supreme Court held that the doctrine of sovereign immunity

has no relevance in the present day context. The findings of the

Hon'ble Supreme Court are as under:-

"Sovereign immunity as defence was, thus, never available where the State was involved in commercial or private undertaking nor it is available where its officers are guilty of interfering with life and liberty of a citizen not warranted by law. In both such infringement the State is vicariously liable and bound, constitutionally, legally and morally, to compensate and indemnify the wronged person." (para 13)

"That apart, the doctrine of sovereign immunity has no relevance in the present day context when the concept of sovereignty itself has undergone drastic change. Further, whether there was any sovereign in the traditional sense during British rule of our country was not examined by the Bench in Kasturi Lal case (supra) though it seems it was imperative to do so." (para 14)

"The old and archaic concept of sovereignty thus does not survive. Sovereignty now vests in the people." (para 21)

"In the modern sense the distinction between sovereign or non-sovereign power thus does not exist." (para 23)

"But there the immunity ends. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in Nineteenth Century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at par with any other juristic legal entity. Any watertight compartmentalisation of the functions of the State as "sovereign and non-sovereign or "governmental or non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligently. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. Even in America

where this doctrine of sovereignty found its place either because of the financial instability of the infant American States rather than to the stability of the doctrine theoretical foundation, or because of 'logical and practical ground', or that 'there could be no legal right as against the State which made the law' gradually gave way to the movement from, 'State irresponsibility to State responsibility.' In welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity."(para 24)

29. In the case of **Common Cause, a Registered Society vs. UOI** (supra), the Hon'ble Supreme Court held that no civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The findings of the Hon'ble Supreme Court are as under:-

"The decision in Kasturilal' case has apart from

being criticised (See Constitutional Law of India by Seervai), not been followed by this Court in subsequent decisions and, therefore, much of its efficacy as a binding precedent has been eroded.”(para 77)

30. In the case of **State of Andhra Pradesh vs. Challa Ramkrishna Reddy** (supra), the Hon’ble Supreme Court held that **the principle of sovereign immunity has no place in Indian jurisprudence where the power vests in the people who elect the representatives to run the Government which has to act in accordance with provisions of the Constitution and would be answerable to the people.** It was held as under:-

“Immunity of State for its sovereign acts is claimed on the basis of the old English Maxim that the King can do no wrong. But even in England, the law relating to immunity has undergone a change with the enactment of Crown Proceedings Act, 1947.”(para 19)

“Thus, the Crown in England does not now enjoy absolute immunity and may be held vicariously liable for the tortious acts of its officers and servants.” (para 20)

“The Maxim that King can do no wrong or that

the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof." (para 21)

"Right to Life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that Right." (para 22)

"The law has marched ahead like a Pegasus but the Government attitude continues to be conservative and it tries to defend its action or the tortious action of its officers by raising the plea of immunity for sovereign acts or acts of State, which must fail." (para 32)

31. Apart from the Hon'ble Supreme Court judgments, there have been number of High Court judgments where the High Court discarded the doctrine of sovereign immunity in the cases of road accidents following the aforesaid judgments of the Hon'ble Supreme Court. The judgments are as under:-

(a) Usha Aggarwal vs. Union of India (supra).

A military truck carrying arms met with an accident with a

motorcycle resulting in the death of a pillion rider. The legal representatives of the deceased victim filed the claim petition before the learned Tribunal which was dismissed on the ground that the truck was engaged in performance of sovereign functions of the State. The appeal was filed before the Punjab & Haryana High Court. Following the judgment of the Hon'ble Supreme Court in the case of **Pushpa Thakur vs. Union of India** (supra), the High Court allowed the appeal.

(b) Gurbachan Kaur vs. Union of India (supra).

A military lorry hit a motorcyclist resulting in his death. The legal representatives of the victim filed the claim petition before the Claims Tribunal which was defended on the principle of sovereign immunity. The High Court rejected the plea of sovereign immunity.

(c) State of Rajasthan vs. Shekhu (supra).

The Government jeep did hit a cyclist resulting in his death.

The legal representatives of the deceased filed the claim petition before the Claims Tribunal which passed an award for Rs.2,36,000/- which was challenged by the State of Rajasthan on the principle of sovereign immunity. Following the judgments of the Hon'ble Supreme Court, the Rajasthan High Court rejected the plea of sovereign immunity and held as under:-

"23. The Hon'ble Apex Court in the case of Pushpa Thakur v. Union of India, 1984 ACJ 559 (SC), has held that the doctrine of sovereign immunity has no application so far as claims for compensation under Motor Vehicles Act are concerned. That apart, after the amending Act 100 of 1956, by which section 110-A of Motor Vehicles Act, 1939, was inserted, the distinction of sovereign and non-sovereign acts of the State no longer existed as all owners of vehicles were brought within the scope of that section. Section 166 of the new Act of 1988, reproduces section 110-A of the old Act. Whether the State is bound by the provisions of the Motor Vehicles Act is no longer res integra."

32. The appellants have relied upon the judgment of **Secretary of State vs. A. Cockcraft** (supra) which relates to pre-constitutional era based on outdated notion that the 'King can do no wrong'. This

judgment does not hold good after the judgments of the Hon'ble Supreme Court in the cases of **State of Rajasthan vs. Vidhyawati** (supra), **Pushpa Thakur vs. Union of India (Supra)** and other judgments. The appellants have next referred to the judgment of the Hon'ble Supreme Court in the case of **Kasturilal Ralia Ram Jain vs. State of Uttar Pradesh** (supra) which has been considered but not followed by the Hon'ble Supreme Court in several cases. The Hon'ble Supreme Court in the case of **State of Andhra Pradesh vs. Challa Ramkonda Reddy** (supra) held that the maxim 'King can do no wrong' has no place in Indian jurisprudence where the power vests not in the crown but in the people who elect their representatives to run the Government which has to act in accordance to the Constitution and is answerable to the people for violation thereof. It was further held that in the process of judicial advancement, **Kasturi Lal's** case has paled into insignificance and is no longer of any binding value. In another case of **Common Cause, a Registered Society vs. UOI** (supra), the Hon'ble Supreme Court held that no civilized system can permit an executive to

play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The findings of the Hon'ble Supreme Court are as under:-

"The decision in *Kasturilal* case has apart from being criticised (See *Constitutional Law of India* by Seervai), not been followed by this Court in subsequent decisions and, therefore, much of its efficacy as a binding precedent has been eroded."

The judgment of **N. Nagendra Rao and Co. vs. State of Andhra Pradesh** (supra) does not support the appellant. The Hon'ble Supreme Court has taken note of the decision of Supreme Court in **Pushpa Thakur case** (supra) in para 13 of the said judgment while noting that the field of operation of the principle of sovereign immunity has been substantially whittled down by the subsequent decisions of the apex Court and observed as under:-

"In *Pushpa Thakur v. Union of India and Anr.* (1984) ACJ SC 559, this Court while reversing a decision of the Punjab & Haryana High Court (1984 ACJ 401) which in its turn placed reliance on a Full Bench decision of that very Court in *Bakshi Amrik Singh v. Union of India* (1973) PLR Vol.75 p.1 : 1974 ACJ 105 held that where the accident was caused by

negligence of the driver of military truck the principle of sovereign immunity was not available to the State.”

The appellants have also referred to and relied upon the the judgment of **Bakshi Amrik Singh vs. Union of India** (supra) which has been overruled by the Hon’ble Supreme Court in the case of **Pushpa Thakur vs. Union of India** (supra). The judgments of **Thangarajan vs. Union of India** (supra) and **Shakuntala vs. Union of India** (supra) referred to by the appellants also do not hold good in view of the judgment of the Hon’ble Supreme Court in **Pushpa Thakur’s** case.

33. The law with respect to the doctrine of sovereign immunity is clear and well settled and the following principles of law emerge from the judgments of the Hon’ble Supreme Court:-

- (I) **The rule of immunity in favour of Crown based on common law in the United Kingdom has disappeared from the land of its birth and it has no validity in our country after the Constitution. The Hon’ble Supreme Court has further held that Article 300 of the Constitution has saved the right of**

Parliament to enact such law but no law has been enacted till now.

(II) The Maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof.

(III) The State is liable for the acts of its employees and there exists no distinction between sovereign and non-sovereign acts and like ordinary citizen, the State would be liable for the act done by its employees.

(IV) The plea that the driver was on sovereign duty is not open to the Govt. vis-à-vis its citizens especially in a welfare State.

- (V) Even in advanced countries like England, United States and Australia the trend and tendency is to whittle down the rigour of sovereign immunity and pave a smooth and sailing way for laying actions against the Government for torts suffered or injuries caused to the citizens at the behest of the governmental machinery by means otherwise than through procedure established by law.
- (VI) The Hon'ble Supreme Court in the case of Pushpa Thakur v. Union, 1984 ACJ 559, has held that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned.
- (VII) Motor Vehicles Act, 1988 is a special law to govern the payment of compensation to the victims of the road accident and it covers the vehicles owned by the Central Government used for defence purposes and no exception

has been carved out in the law with respect to the torturous liability arising out of use of Government vehicle performing sovereign functions. Reference in this regard may be made to Section 2(20)(30)(37), 18, 60, 140(1), 144, 146(2) & (3), 165 and 168 of the Motor Vehicles Act, 1988. Whether the State is bound by the provisions of the Motor Vehicles Act is no longer res integra.

(VIII) It does not behove the State to seek cover under the plea of sovereign immunity merely to avoid liability for the consequences of the negligence of its servants. Such a plea is wholly out of place in a welfare State, in a case like the present where instead of providing for the needy, left so by the acts of its servants in the course of their employment, the attempt is to look for immunity founded upon the dubious privilege of the injured or the deceased, as the case may be, being run over by a vehicle

engaged in the discharge of the sovereign functions of the State.

(IX) The law has marched ahead like a Pegasus but the Government attitude continues to be conservative and it tries to defend its action or the tortious action of its officers by raising the plea of immunity for sovereign acts or acts of State.

34. If the Executive does not follow the certain well settled law laid down by the Hon'ble Supreme Court, it shall create confusion in the administration of justice and undermine the law laid down by the Apex Court and shall impair the constitutional authority of the Apex Court. The disobedience of the law laid down by the Court shall also amount to contempt of Court. Reference in this regard may be made to the following two judgments:-

(i) Baradakanta Mishra Ex-Commissioner of Endowments Vs. Bhimsen Dixit, (1973) 1 SCC 446:

In this case, the appellant, a member of Judicial Service of State of

Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court held as under:-

"The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty

and confusion in the administration of law" (para 15)

(ii) State of Gujarat Vs. Secretary, Labour Social Welfare & Tribunal Development Deptt., 1982 CriLJ 2255:

The Gujarat High Court held the Secretary, Labour and Social Welfare and Tribal Development Department, to be guilty of contempt for refusing to follow the law laid down by the High Court. It was held as under:-

"In *Hasmukhlal C Shah v. State of Gujarat* (1978) 19 Guj LR 378, a Division Bench of the High Court consisting of J.B. Mehta and P.D., Desai, JJ., after examining several decisions of the point observed:

"In a Government which is ruled by laws, there must be complete awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private individuals, organizations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the Courts of law under the Constitution might be rendered a futile exercise."

11. From these four decisions, the following

propositions emerge.

(1) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State;

(2) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding;

(3) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a willful disregard of the law laid down by the High Court and would amount to civil contempt as defined in Section 2(b) of the Contempt of Courts Act, 1971."

35. In the recent judgment dated 30th October, 2009 in the case of

Urban Improvement Trust, Bikaner Vs. Mohan Lal, 2009 Scale (13)

671, the Hon'ble Supreme Court showed a serious concern that frivolous and unjust litigation by the Government and statutory authorities are on increase. The Hon'ble Supreme Court observed as under:-

"4. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They cannot behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

5. This Court has repeatedly expressed the view that the governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust)

contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

5.1) In *Dilbagh Rai Jarry v. Union of India* [1973 (3) SCC 554] where this Court extracted with approval, the following statement (from an earlier decision of the Kerala High Court):

“The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and

wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.

5.2) In Madras Port Trust v. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.Rs. [(1979) 4 SCC 176] held:

"2... It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the

purpose of resisting such a claim has become unavailable....”

5.3) In a three Judge Bench judgment of Bhag Singh and Ors. v. Union Territory of Chandigarh through LAC, Chandigarh: [(1985) 3 SCC 737]:

“3.... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.”

6. Unwarranted litigation by governments and statutory authorities basically stem from the two general baseless assumptions by their officers. They are:

- (i) All claims against the government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.
- (ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secures a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision making to courts and Tribunals. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But, it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigation. Vexatious and unnecessary litigation have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to bona fide and needy litigants."

36. Before passing any further order in this matter, this Court would like the learned Attorney General to personally look into the matter and consider the implication of Government raising the plea of sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear

and well settled law by the Hon'ble Supreme Court. The learned Attorney General shall ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and shall also consider the possibility of issuance of a circular/Government of India directive in respect of all pending motor accident claim cases as well as cases that may arise in future.

37. Notice be issued to the learned Attorney General through Mr. Atul Nanda, Standing Counsel of Union of India to assist this Court either personally or by giving necessary instructions.

38. List for the response to the notice on 4th December, 2009.

39. Copy of this order be given 'Dasti' to learned counsel for the parties as well as to the Standing Counsel of Union of India under signature of Court Master.

J.R. MIDHA, J

NOVEMBER 12, 2009

