

Quadrant II - Notes

Paper Code: LRM 0112

Module Name: The Municipal Corporation of Delhi v. Smt.

Sushila Devi and Ors.

Module No:04

Two brothers riding on a scooter- returning home from office.

On the way, a branch of a roadside neem tree suddenly broke and fell on the head of the rider, causing his death.

His widow filed a suit for damages against the Delhi Municipal Corporation claiming 3 lakhs.

Suit was decreed in her favour by a Single Judge of the Delhi High Court.

The Court held Delhi Municipal Corporation (DMC) liable for damages in tort and awarded the widow Rs. 90,000 as compensation.

Both parties filed separate appeals (Letters Patent Appeal) before the Division Bench of the Delhi High Court.

Division Bench dismissed the appeal of the Delhi Municipal Corporation.

Appeal of claimant seeking enhancement of compensation was partly allowed.

She was awarded Rs. 1,44,000 as compensation with interest at 6%p.a. and further interest at 3% p.a.

Both parties preferred further appeals to the Supreme Court.

Issues

1. Whether legal notice of two months duration had to be served by claimant on Delhi Municipal Corporation in view of S.478(1) of Delhi Municipal Corporation Act, 1957?
2. Whether in view of S.478(2) of said Act, suit is barred by limitation?
3. Whether the tree in question posed a danger to passers by and created an obligation on the owner to have it trimmed/cut?
4. Whether the interest awarded on the compensation was proper?

Relevant provision of the Law

S.478(1) "No suit shall be instituted against the Corporation...in respect of any act done or purporting to have been done in pursuance of this Act...until the expiration of two months after notice in writing has been left...."

(2) No suit as described in subsection(1).....shall be instituted after the expiry of 6 months from the date on which the cause of action arises.

Issue 1 -Whether legal notice of two months duration was required ?

Petitioner's contention –

(i)Municipal Corporation is an authority under the Act and therefore ---notice of 2 months duration was required to be given to it under section 478 (1)of Delhi Municipal Corporation Act.

(ii) The words '*any act done or purporting to have been done*' in the said section includes an omission .

Court rejected petitioner's contention regarding the applicability of Act to instant case.

Section 478(1) not attracted in this case.

Said act was neither done nor purported to have been done under the Act.

It was an act for which liability for negligence arises under the Law of Torts.

Issue 2 Whether suit is barred by limitation under S. 478 (2) of Act?

Petitioner's contention - that 'act is done or purported to be done' under the DMC Act, hence limitation period of 6 months under said Act applies.

Court rejected above contention on ground that action is founded on tort and not under DMC Act.

Hence Article 82 of Limitation Act,1963 would apply and this suit is well within the time prescribed therein.

Issue No.3

Whether the tree in question posed a danger to passers by and created an obligation on the owner to have it trimmed/cut?

a) Court considered the following

- (i) Expert evidence of Botany professor – tree had no bark –dried up and dying.
- (ii) Garden Superintendent - tree was dead, dried and dangerous.
- (iii) Deputy Commissioner Horticulture- looked like a partly worn out tree.

Court considered following commentaries

Winfield and Jolowicz on Tort- Liability of owner or occupier to
maintain safe premises .

Clerk and Lindsell on Torts - the law on trees adjoining the public highway

Charlesworth and Percy on Negligence

Cases referred to:

Hale v. Hunt -case of branch of tree projecting on highway that broke window pane.

Delhi Municipal Corporation v. Subhagawanti-case of collapse of clock tower .

Issue No.4 Whether the interest awarded on the compensation was proper?

Court did not interfere with the interest awarded on consideration of a totality of circumstances.

The premises must be maintained in a safe state of repair.

Owner cannot take defence that he neither knew nor ought to have known the danger.

Owner is legally responsible irrespective of whether the damage is caused by a patent or latent defect.

Both the appeals were dismissed .

Appeal filed by Delhi Municipal Corporation was dismissed with costs payable by them to claimant.

Appeal filed by claimants was dismissed without any order as to costs.

SC held the Delhi Municipal Corporation liable for negligence in performing the duty under common law.

And also liable in damages for the injury caused by fall of the branch of the tree and for the consequences flowing therefrom.