

## **State cannot claim sovereign immunity in Motor Accident cases-Says Delhi High Court**

The already devastated legal heirs of deceased victim of the vehicle accident involving government vehicle now, no longer have to run from pillar to post to get compensation which is denied to them on the ground of government vehicle engaged in so called sovereign duty and thus claim sovereign immunity which is an archaic concept. No civilized country in this world which claims itself to be founded on the notions of the welfare state, shun its liability towards accident victims and their legal heirs involving its own vehicle on the ground they were doing a government duty, thus, entitled to act in any manner as it is sovereign. No legal system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his life or property illegally by negligent act of employees or officers of the State without any remedy. The Government and its functionary have trend to deny their liability towards the poor victim or the legal heir victim of state negligent act by raising the plea of the sovereign immunity, showing their apathy towards the victims which reflects the medieval mindset borrowed from the British Raj.

The Motor Accident Claims Tribunal awarded the compensation to the poor widowed lady whose husband died in an accident cause by the Air Force Vehicle. The Air force filed an appeal in the High Court that it is not liable to pay compensation as its vehicle was exercising a sovereign function, an oft repeated plea taken by various departments of governments to shun their liability towards the accident victim. Advocate Neeraj Aarora took the noble cause to fight for justice for the poor lady pro bono and represented the poor lady in the Delhi High Court against the irresponsible behavior of the Air Force. Advocate Neeraj Aarora argued at length the dichotomy between sovereign and non-sovereign functions citing leading judgments of Apex Court and various High Courts which shows that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act is concerned.

The Hon'ble Mr. Justice J.R. Middha, taking the note of the important constitutional issue that whether the "Doctrine of Sovereign Immunity" is available to defeat the claim for compensation under the Motor Vehicles Act, 1988 appointed Amicus Curie and also requested the Additional Solicitor General to assist the case. The legal luminaries submitted that the Motor Vehicle Act, 1988 was a special law and no exception had been carved out in the statute in respect of use of government vehicle for defense purposes. It was also submitted that the doctrine of sovereign immunity had no place in Indian Jurisprudence citing the judgment of the Hon'ble Apex Court in State of Rajasthan Vs. Vidyawati, AIR 1962 SC 933. The said principle has been reiterated by the Supreme Court in a large number of decisions and in one of the decisions; the concept was described as 'Old and Archaic'. In addition to the judgments of the Supreme Court, there are a substantial number of judgments of various High Courts which have rejected the plea of sovereign immunity. The doctrine of sovereign immunity is based on the supremacy of the monarchy of the England. In India, which is a parliamentary democracy governed by the Constitution, there is no equivalent to monarch.

The Hon'ble Mr. Justice J.R. Middha took note of the contentions raised against the illogical principles of sovereign immunity reflecting the apathy of the state towards the poor victims of the accident involving government vehicles and rightly observed that it did not behove the State to take cover under the

principle of sovereign immunity only to shun liability for the consequences of the negligence of its servants. However, before passing any final verdict on the issue, the Hon'ble Mr. Justice J.R. Mirdha considering the adverse implications of the 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 issued the direction to the Ld. Attorney General seeking its opinion as to in how many cases, the state has taken or raised the plea of "sovereign immunity" in pending motor accident claim cases in various courts and tribunals and also directed the Attorney General to 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.

The aforesaid directions of the Hon'ble Mr. Justice J.R. Mirdha are judicious, well thought-out, highly commendable as it seeks out to curb the government apathy and irresponsible behavior in motor accident cases once and for all not only in present pending cases but also the similar cases which may arise in future through the country.

The Ld. Solicitor General Mr. Gopal Subramaniam in his communiqué dated 19th May, 2010 addressed to the Hon'ble High Court of Delhi opined that taking into account correct legal position as enumerated above, a clear office memorandum should be issued to the effect that the defence of sovereign immunity not be pleaded by Department of Government in cases involving compensation arising out of motor vehicle accidents involving the use of Government vehicles on Government duty and advised the Ministry of Law & Justice to issue the said memorandum.

Thus, the aforesaid direction of the Hon'ble Justice Mr. J.R. Mirdha has paved a new foundation for justice and corrected a grave constitutional error in form of doctrine of sovereign immunity which can now no more be pressed as defence by the government departments to shun their liability towards its poor subjects.

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