

Item No.07

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 104/2017(CZ)

Rajendra Kori & Anr.

Applicant(s)

Versus

Yashwant Agarwal &Ors.

Respondent(s)

Date of hearing: 13.12.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

Applicant: Mr. Dharamveer Sharma, Advocate

Respondent(s): Ms. Parul Bhadoria, Advocate. for MPPCB.  
Mr. Sachin K. Verma, Advocate for the State of Madhya Pradesh.  
Mr. Udaj Rai Singh, Advocate

**ORDER**

1. Prayer in this application is for award of compensation of ₹7,50,000/- with interest to the applicants who are the parents of minor Vikas Kori alias Vipin Kori, who died on 25.09.2016 on account of negligence of the owner of stone crusher at village Lalua Tora, Police Station Cant, District Guna, Madhya Pradesh. Age of the deceased was 12 years 05 months on the date of death and he was a student of Om Sai Nath Public School.

2. Case of the applicant is that respondent No. 1, Yashwant Agarwal, S/o. Shri Chhitramal Agarwal, R/o. Sadar Bazar Guna, District Guna, Madhya Pradesh was the owner of Stone Crusher M/s. Maa Shakmbhari

Stone Crusher, Guna. He was doing mining activity negligently without fencing the mining area. The child was playing in the open area. Mine pits were filled with water due to unscientific mining. The child was drowned in the pit and died along with six other children who were playing. FIR was lodged with regard to the incident. As per norms, Progressive Mine Closure Plan had to be prepared as per applicable mining norms under the Environment (Protection) Act, 1986. Consent to Establish and Consent to Operate issued under the Water (Prevention & Control of Pollution) Act, 1974, by the State PCB required precautionary measures to be taken by the mining owner. In the present case, no sign board of caution was affixed near the place of incident. Postmortem of the deceased was conducted and cause of death was found to be Asphyxia as a result of drowning.

3. The application was filed on 05.09.2017. Parties impleaded to the application are Yashwant Agarwal, District Collector, State of Madhya Pradesh and Madhya Pradesh State PCB. On 13.11.2017, notice was issued. Respondent No. 1, Yashwant Agarwal, filed reply on 23.10.2020 to the effect that the crusher machine in question was sold by him to one Mr. Anil Bhargava on 30.04.2014. Thus, on the date of incident he had no control on the mining operation and thus not liable to pay anything. The State PCB in its reply/additional reply dated 28.07.2021 has given details of the compensation paid to the heirs of the deceased by the State as follows:-

**“3.** *In compliance to the direction passed by the Hon’ble National Green Tribunal, the answering respondent has collected the information from the district administration and the same is as under:-*

<b>Date of Accident-</b>	25.09.2016
<b>Place of Accident-</b>	Village Lalua Tora, Piproda Khurd,

*Tehsil & District Guna*

**No. of persons Died- 7 Children**

As per Revenue Book Circular 6-4 [Para 2(a) 5], an amount of ₹1,00,000/- has been paid to the parents of all the deceased children. The details are as under:-

<b>S.N.</b>	<b>Name of Deceased</b>	<b>Name of Beneficiary</b>	<b>Date</b>	<b>Amount</b>
1	Vikas Kori Age-11 Years	Rajendra Kori	28.09.2016	1,00,000/-
2	Dilip Kushwaha Age-14 Years	Jagannath Kushwaha	28.09.2016	1,00,000/-
3	Golu Kori Age-12 Years	Mansingh aka [Mastana Kori]	28.09.2016	1,00,000/-
4	Anand Kushwaha Age-12 Years	Parvat Singh	28.09.2016	1,00,000/-
5	Hemant Kori Age-11 Years	Bharti Panth	28.09.2016	1,00,000/-
6	(i) Tillu Kushwaha Age-14 Years  (ii) Karan Kushwaha Age-12 Years	Rajkumari Kushwaha	19.10.2016	2,00,000/-

4. In the reply filed on behalf of the Collector and the State, it is stated that the Mining Officer has directed Mr. Yashwant Agarwal, respondent no. 1, to implement Mine Closure Plan vide order dated 07.10.2021.

5. We have heard learned Counsel for the parties.

6. It is clear from the record that death of minor Vikas Kori and six other children took place on 25.09.2016 due to drowning in the pit which was part of mining area. There is no other cause for their death except drowning, as stated. Even till 2021, proper mining closure has not taken place. Mining is hazardous activity and death attributable to the same attracts the principle of absolute liability. The activity being subject to regulatory control, the authorities failing to perform their duties are equally liable for their failure which results in loss of life or other such loss. On the doctrine of *Res ipsa loquitur*, negligence for the incident can certainly be inferred for which themining lessee is responsible and joint and several liability is of the regulatory authorities. Plea that in 2014,

mine was transferred cannot be accepted in view of order dated 03.12.2015 of the State PCB addressed to the respondent Yashwant Agarwal. Environmental Clearance (EC) has been renewed in his favour from 01.07.2015 to 30.06.2016. We also find a Show Cause Notice dated 08.09.2016 on record being Annexure R-4/2 (page 177), whereby the State PCB issued notice to the project proponent to the effect that even without Consent to Establish/Consent to Operate/CCA, mining operations were being continued. Respondent No. 1 vide reply dated 24.09.2016 (Annexure R-4/3) denied the allegations. The State itself has paid compensation, though it is inadequate. It is not disputed that there was abandoned open pit which was unfenced. Mine Closure Plan has still not been implemented. There is also failure of the State authorities to monitor compliance.

7. In above circumstances, liability of respondent no. 1 and the State Authorities is joint and several. They are held liable for compensation for the death of deceased Vikas Kori. In view of law laid down inter alia in *Sarla Verma*, (2009) 6 SCC 121, *N.I. Company vs. Pranay Sethi*, (2017) 16 SCC 680 and *Uphaar Cinema* (2011) 14 SCC 481, we determine the total liability at lump-sum amount of ₹10,00,000/-, if paid within three months. The State will be liable to pay with liberty to recover 90% of the amount from the mining lessee. The Collector may disburse the amount to the heirs, after proper identification, deducting the amount already paid.

8. Though claim is in respect of one deceased, we recommend that as a welfare State, the State may pay identical amount to all similarly placed persons with similar liberty to recover the amount from the mining lessee.

9. If the amount is not paid as above, the applicant is at liberty to take remedies, including further claim of interest.

Application is disposed of accordingly.

A copy of this order be forwarded to the Chief Secretary, MP and Collector, Guna by e-mail for compliance.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Dr. Arun Kumar Verma, EM

December 13, 2021  
Original Application No. 104/2017(CZ)  
AVT