

Item Nos. 04 to 07

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No.90/2021(CZ)
(I.A. No. 09/2022)

Ranvir Singh Kori

Applicant

Versus

Yashwant Agrawal Stone Crusher Owner

Respondent

WITH

Original Application No. 91/2021(CZ)
(I.A. No. 10/2022)

Rajkumari Kushwaha

Applicant

Versus

Yashwant Agrawal

Respondent

WITH

Original Application No. 92/2021(CZ)
(I.A. No. 11/2022)

Jagannath Kushwaha

Applicant

Versus

Yashwant Agrawal Stone
Crusher Owner

Respondent

WITH

Original Application No. 93/2021(CZ)
(I.A. No. 12/2022)

Mastana Kori

Applicant

Versus

Yashwant Agrawal Stone
Crusher Owner

Respondent

Date of hearing: 25.04.2022

**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. ARUN KUMAR VERMA, EXPERT MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

Applicant: Mr. Dharamveer Sharma, Advocate
Respondent(s): Mr. Sachin K. Verma, Advocate for the State of Madhya Pradesh
Mr. Enosh George, Advocate for Yashwant Agrawal Stone Crusher
Ms. Sonam Malviya, Advocate for Mr. Anil Bhargava
Ms. Parul Bhadoria, Advocate

ORDER

1. This order will deal with the above four applications which involve claims for compensation for the deaths of children on 25.09.2016, by drowning in deep pits dug for mining and not maintained as per safety norms. In all seven children lost their lives.

2. In O.A. No. 90/2021, the deceased is Hemant Pant s/o Ranvir Singh, aged 15 years, resident of Village Piproda Khurd Tehsil and District Guna, M.P. The applicant is heir of the deceased and has filed death certificate, school certificate, copy of FIR dated 25.09.2016 and newspaper report about the incident. According to the applicant, the death was due to asphyxia. The victim had passed 3rd standard exam. The accountability is of the mine owner, Yashwant Agrawal, Respondent No.1, who was conducting mining without any precautions resulting in the victim falling in the open pit along with other students. Requisite Progressive Mine Closure Plan was not prepared and executed which is also violation of consent conditions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. Applying the multiplier of 18 and taking minimum income at Rs. 3000/- per month, claim is for Rs. 6.48 Lakhs, apart from standard heads of compensation totaling Rs. 942200/-, with 18 % interest.

3. Claims in O.A. Nos. 91 to 93/2021 are identical. Names of the deceased are Karan Kushwala, aged 13 years and Shivkumar Kushwala, aged 14 years sons of Late Shri Ashok Kushwala of Village Piproda Khurd Teh. & Distt. Guna (M.P) (O.A. 91/2021), Dileep Kushwah s/o Jagannath Kushwah aged 13 years of Village Piproda Khurd Teh. & Distt. Guna (M.P) (O.A. No. 92/2021) and Golu Kori s/o Mastana Kori aged 12 years of Village Piproda Khurd Teh. & Distt. Guna (M.P).

4. Reply has been filed by the Project Proponent and the authorities of State of MP. I.A. No. 05/2022 has been filed by Respondent No. 1, Yashwant Agrawal that the crusher in question was sold on 08.08.2007 to one Anil Bhargava. I.A. No. 09/2022 has been filed by Anil Bhargava that he has purchased the crusher and is liable for compensation. The stand of the PP is also that he is not liable for compensation as Anil Bhargava has accepted his liability. Compensation can be paid only to the victims of pollution and not victims of accidents. There was no question of filling up the pits as mineral was still available. The PP has not committed any negligence which may have resulted in deaths which was due to negligence of victims themselves. As per demarcation by the Revenue Authorities, untoward incident is not in the areas leased to the PP, as per demarcation dated 02.03.2022.

5. However, the stand of the Collector, the Mining Department and the PCB is that the State has already given a sum of Rs. 7 Lakh in total (at the rate of Rs. 1 Lakh per victim). No further compensation is liable to be paid.

6. We have heard learned Counsel for the parties and perused the record.

7. The matter being covered by earlier order dated 13.12.2021 in O.A. No. 104/2021 in respect of same incident, the applicants are entitled to compensation on the same pattern. Contentions raised by the PP as well as authorities were earlier considered and rejected.

8. As per order of the Collector dated 24.11.2016, Annexure R-4/3 to the reply of the State PCB filed on 28.01.2022, the mining lease was in operation on the day of the incident. There was no fencing of the pits nor any board of caution. The place of incident was part of mining area. Action of transfer of the lease by the PP to Anil Bhargava was unauthorized and prohibited by the Rules. On that ground, the lease granted to Yashwant Agrawal was cancelled. Thus, stand of Yashwant Agrawal that he is not liable as he has transferred the lease has been found to be untenable. The PP has to be held accountable for compensation for the deaths in the incident. Section 15 of the NGT Act, 2010 clearly empowers the Tribunal to deal with claim of the victim of violation of environmental norms. If the mining was done in violation of safety precautions as per consents under the Water Act, 1974, Air Act, 1981 and Environmental (Protection) Act, 1986 and also on the principle of 'Absolute Liability' laid down in *M.C. Mehta & Anr. v. Union of India (1987) 1 SCC 395*, the PP is liable for compensation for loss on account of its hazardous activities. It has been found by the Collector and the PCB that no Proper Mining Closure Plan was submitted. There was no fencing and no board displaying danger involved for any person entering the mining area which had deep pits. In such cases, negligence is not required to be proved and principle of absolute liability is attracted, activity being hazardous, burden of proof is on project proponent to show that its activity is benign. The State has also to share responsibility for failure to oversee safety precautions in conducting hazardous activities.

Mere fact that in a subsequent demarcation, the area is declared to be outside the mining area does not affect the situation.

9. We may reproduce operative part of earlier order dated 13.12.2021 dealing with the same incident:-

“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 the mining 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.”

10. Following the above, we hold the applicants entitled to compensation of Rs. 10 Lakhs in respect of each of deaths to be paid within three months. State will be at liberty to recover 90% of the amount from the PP. The Collector may disburse the amount to the heirs after proper identification, deducting the amount already paid.

All the applications will stand disposed of accordingly.

Pending I.A.s will stand disposed of.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Sudhir Agarwal, JM

Dr. Arun Kumar Verma, EM

Prof. A. Senthil Vel, EM

April 25, 2022
Original Application No.90/2021(CZ)
(I.A. No. 09/2022) & other connected matters
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