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IN THE KARNATAKA HIGH COURT

Equivalent Citations : 2026 KHC 51190

[Before : Suraj Govindaraj]

Sri Chandan G vs. The State of Karnataka and Ors.

Case No. : WP No. 31629 of 2024 (LB-BMP)

Date of Decision : 18-09-2026

ISSUE FOR CONSIDERATION

Issue 1: Whether the Bruhat Bengaluru Mahanagara Palike (BBMP) owed a statutory and public duty to prevent injury caused by a dangerous tree branch projecting over a public road from private property and breached such duty resulting in injury to the petitioner? Issue 2: Whether the petitioner is entitled to compensation for the injuries sustained due to the BBMP's failure, and the quantum and apportionment of such compensation between BBMP and the school on whose premises the tree stood? Issue 3: Whether the plea of act of God or force majeure excludes or limits the liability of BBMP for injuries caused by the falling branch?

LAW POINTS

1) Municipal Corporations Act – Section 323 – Precautions in case of dangerous trees imposes statutory duty on municipal commissioners to require owners to take preventive action and empowers commissioner to take immediate steps to prevent danger from dangerous trees projecting onto public roads.

2) Constitutional Law – Article 21 – Right to life includes right to safe roads and public places and public authorities owe duty to ensure safety; failure to discharge statutory and public duty resulting in personal injury attracts public law liability and entitles affected persons to compensation under writ jurisdiction.

HEADNOTE/S

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A) Karnataka Municipal Corporations Act, 1976 – Section 323 – Public Safety Duty – Duty of Municipal Authorities to Manage Dangerous Trees on Private Property – Liability for Negligence – Issue whether Bruhat Bengaluru Mahanagara Palike owed and breached statutory/public duty in respect of a dangerous tree branch projecting over a public road from premises of a school causing injury to petitioner – Court found BBMP had actual written notice of specific danger but failed timely and effective action – School also aware but lacked statutory authority to trim without permission – BBMP's delay and omission proximate cause of injury – Act of God plea rejected due to prior notice and absence of evidence of extraordinary natural event – Held petitioner's right to life under Article 21 protected, statutory duty properly enfolded under Section 323 obliges BBMP to act promptly – Failure constitutes negligence and public law liability – Compensation granted against BBMP with liberty to recover contribution from school; school bound by existing voluntary payments and undertaking – Final determination on liability and proximate cause in writ jurisdiction proper where material facts undisputed (Paras 18, 19, 21, 22, 23, 24, 25).

B) Constitutional Law – Article 21 – Right to Life – Public Law Compensation – Principles of Assessment of Compensation for Bodily Injury under Public Law Jurisdiction – Claim for compensation arising from fall of a dangerous tree branch causing 85% disability traumatic paraplegia in petitioner – Court applied principles analogous to motor accident jurisprudence for compensation heads – Medical expenses accepted after insurance adjustment (Rs. 24,44,271/-), loss of future income assessed with 40% future prospects and multiplier of 15 totaling Rs.1,03,85,424/-, attendant care charges at Rs.15,000/- per month for 15 years totaling Rs.27,00,000/-, future rehabilitation and treatment expenses at Rs.65,000/- per month for 15 years totaling Rs.1,17,00,000/-, pain and suffering and loss of amenities each awarded Rs.5,00,000/- – Educational expenses claim confined to post-12th standard expenses in view of school's undertaking – Interest at 6% p.a. from date of incident awarded – Total net compensation against BBMP Rs.2,77,29,695/- after crediting ex gratia payment of Rs.5,00,000/- – No direction for employment of petitioner's wife or daughter granted, relief confined to compensation for injury (Paras 26, 27).

***Held**, The Bruhat Bengaluru Mahanagara Palike owed a statutory and public duty under Section 323 of the Karnataka Municipal Corporations Act, 1976 to take timely measures to prevent injury from a dangerous tree branch projecting over a public road from private premises; actual written notice was received, but*

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BBMP failed to act promptly and effectively, breaching that duty, causally connected to petitioner's serious injury. The defense of act of God was rejected due to prior notice and lack of evidence of extraordinary natural event. The petitioner was entitled to compensation of Rs.2,77,29,695/- with interest at 6% per annum payable by BBMP, with liberty to recover contribution from the school on whose premises the tree stood. The school's undertaking to pay Rs.3,00,000/- and provide free education to petitioner's daughter until 12th standard was to be honoured. No mandamus for employment to petitioner's wife or daughter granted. The writ jurisdiction was appropriately exercised given undisputed facts and absence of need for trial. General directions on public safety hazard monitoring and response were issued. (Paras 18, 21, 23, 24, 25, 26, 27)

Background Facts: On 07.03.2024, while proceeding along a public road, petitioner was severely injured when a branch of a Gulmohar tree projecting over the road from Good Shepherd Convent School premises fell on him causing spinal injury and 85% disability. The school, aware of the danger, wrote to BBMP on 16.02.2024 but submitted the letter only on 22.02.2024 requesting pruning permission. BBMP granted pruning permission on the date of incident but failed to take interim protective steps. Petitioner incurred extensive medical expenses and sought compensation. BBMP paid Rs.5,00,000/- ex gratia and the school Rs.3,00,000/-. Criminal proceedings under Section 338 IPC pending. (Paras 2-10, 18, 20)

Parties Contentions: *Petitioner contended that BBMP owed a public law duty to maintain road safety and failed to act on prior notice of dangerous tree branch, causing injury and sought compensation under writ jurisdiction applying motor accident compensation principles. He denied any contributory negligence. (Paras 11, 14, 18) BBMP contended it acted reasonably, permission processing time reasonable, incident was sudden natural event constituting act of God, liability contested and compensation payable if at all only under limited guidelines; writ petition not maintainable with disputed facts, civil trial necessary. (Paras 12, 13, 23, 24) School contended only regulatory permission required, no negligence in notifying BBMP, unable to prune without permission, limited voluntary payments made; denied liability for petitioner's injury. (Paras 12)*

Disposition: *Petition allowed in part; compensation directed to be paid by BBMP with interest and liberty to recover contribution from school; no direction for employment granted; general public safety directions issued.*

Cases Referred :

1. A.Krishna Patra vs Orissa State Electricity Board, 1998 ACJ 155 [Para 11.4]

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2. Brown v. Harrison, (1947) WN 191 [Paras 11, 16]
3. C.Chinnathambi v. State of Tamil Nadu, 2001 WLR 174 [Para 11]
4. C.Thekkamalai v. State of Tamil Nadu, 2006 WLR 13 (DB) [Paras 11, 16]
5. Chairman, Grid Corporation of Orissa Ltd., Vs. Sukamani Das, 1997 (7) SCC 298 [Paras 11.4, 11.4]
6. Chairman, Railway Board v. Chandima Das, AIR 2000 SC 988 [Para 11]
7. D.Matsa Gandhi Vs. Tamil Nadu Slum Clearance Board, 2000 (III) CTC 24 [Para 11.4]
8. Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers, 2011 AIR SCW 4916 [Para 11]
9. Divisional Controller, KSRTC vs. Mahadeva Shetty and another, (2003) 7 SCC 197 [Para 18]
10. Eureka Forbes Limited v. Allahabad Bank & Others, 2010 (3) LW 421 (SC) [Para 11]
11. Ganesan v. The State of Tamil Nadu, 2012 (2) CTC 848 [Para 11]
12. General Traders Ltd. and Anr. vs. Pierce Leslie (India) Ltd. and others, AIR 1987 Ker 62 [Para 16]
13. Guruanna Vadi v. General Manager, Karnataka State Road Transport Corporation, 2001 ACJ 1528 [Para 16]
14. Hale vs. Hants, 1947 (2) All England Reports 628 [Para 16]
15. Harbanslal Sahnia v. Indian Oil Corpn. Ltd., [(2003) 2 SCC 107] [Para 16]
16. Joginder Kaur v. Punjab State, 1969 ACJ 28 (P&H) [Para 11]
17. Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 [Para 11]
18. Lakshmana Naidu (decd) v. State of Tamil Nadu & Another, 2006 WLR 608 [Para 11]
19. Lilly Stanislaus Vs. The Chairman, Tamil Nadu Electricity Board, Chennai and three others, 2008 WLR 278 [Paras 11.4, 11.4]
20. M.C.Mehta Vs. Union of India, AIR 1987 SC 1086 [Para 11]
21. M.P. Electricity Board Vs. Shail Kumari and others, 2002 (2) SCC 162 [Paras 11.4, 11.4]
22. M.S.Grewal v. Deep Chand Sood, AIR 2001 SC 3668 [Para 11]
23. Mackie v. Dumbartonshire County Council, 1927 WN 247 [Paras 11, 16]
24. MCD v. Association of Victims of Uphaar Tragedy, (2005) 9 SCC 586 [Para 21]
25. Minu B. Mehta v. Balkrishna Ramchandra Nayan, AIR 1977 SC 1248 [Para 16]
26. Municipal Corpn. of Delhi v. Subhagwanti, AIR 1966 SC 1750 [Para 11]
27. Municipal Corporation of Delhi v. Sushila Devi (Smt) and others, (1999) 4 SCC 317 [Paras 11, 16, 19, 21]
28. Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy, (2011) 14 SCC 481 [Paras 11, 16, 19, 21]
29. Nath Bros., Exaim International Ltd., v. Best Roadways Ltd., 2000 (4) S.C.C. 553 [Paras 11.4, 11.4]
30. Nilabati Behera v. State of Orissa, 1993 (2) SCC 746 [Paras 11, 16, 18]
31. Nirmala Thirunavukkarasu Vs. Tamil Nadu Electricity Board, 1997 L.W. 42 [Para 11.4]
32. Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, 2001 ACJ 827 [Para 16]
33. P.N.Kanagaraj v. Chief Secretry, State of Tamil Nadu, 2008 (6) CTC 144 [Para 11]
34. P.Ravichandran v. The Government of Tamil Nadu, 2011 (6) CTC 636 [Para 11]
35. Parvati Devi Vs. Commissioner of Police, Delhi, 2000 (3) SCC 754 [Para 14]
36. Pimpri Chinchwad Municipal Corpn. v. Gayatri Construction Co., (2008) 8 SCC 172 [Para 16]
37. Quebec Rly. Light, Heat, Power Co. Ltd. v. Vandry, 1920 SC 662 [Para 11.4]
38. Quinn v. Scott, (1965) 1 WLR 1004 [Paras 11, 16]
39. R.Saroja Vs. The Chairman, Tamil Nadu Electricity Board, Chennai, W.P.No.6437 of 1998 [Para 11.4]
40. Rabindra Nath Ghosal Vs. University of Calcutta, AIR 2002 SC 3560 [Para 11.4]
41. Rajkot Municipal Corporation v. Manjulben Jayantilal Nakum and others, (1997) 9 SCC 552 [Para 21]
42. Rushi Pursti vs Orissa State Electricity Board, 1999 ACJ 440 [Para 16]

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43. S.Paramasivam Achari Vs. The Head Master Govt.High School, Amur, 1999 Writ L.R.525 [Para 11.4]
44. Seema Ganesh Uikey v. State of Maharashtra and Ors., 2007 ACJ 1090 [Para 16]
45. Smt.Kumari Vs. State of Tamil Nadu and others, AIR 1992 SC 2069 [Paras 11.4, 11.4]
46. Smt.R.Dhanalakshmi v. Government of Tamil Nadu, 2004 WLR 346 [Para 11]
47. Smt.S.K.Shangring Lamkang and another Vs. State of Manipur, AIR 2008 Gauhati 46 [Para 11.4]
48. State of Rajasthan v. Vidhyawati, 1962 Supp (2) SCR 989 [Para 11]
49. Subramaniam v. State of Tamil Nadu, 2009 (1) CTC 434 [Para 11]
50. Sulochana v. Karnataka State Road Transport Corporation, ILR 2003 KAR 4911 [Paras 16, 26]
51. Susanta Samanta and others Vs. WBSEB and others, AIR 2004 Calcutta 200 [Para 11]
52. T.Sekaran v. State of Tamil Nadu & Others, 2010 WLR 851 (DB) [Para 11]
53. Taj Singh @ Tejpal Singh vs M.P.State Road Transport, 2000 ACJ 214 [Para 11.4]
54. Tamil Nadu Electricity Board Vs. Sumathi and others, 2000 (4) SCC 543 [Paras 11.4, 11.4, 11.4]
55. Thangapandi v. Director of Primary Health Services, (2011) 1 MLJ 1329 [Para 11]
56. The Chief Secretary to the Government of Tamil Nadu v. Mrs.R.Selvam, 2004 WLR 611 (DB) [Para 11.4]
57. The Hon'ble Supreme Court in Municipal Corporation of Delhi v. Smt.Sushila Devi & Ors., AIR 1999 SC 1929
58. The Registrar Administration, Madurai Bench of Madras High Court v. Secretary to Government, Home Department, 2011 (1) CWC 786 [Para 11.4]
59. U.P. Power Transmission Corporation Ltd. v. CG Power and Industrial Solutions Ltd., (2021) 6 SCC 15 [Para 11.12]
60. U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey, 1999 (1) SCC 741 [Para 11.4]
61. Union of India rep by its Secretary, Ministry of Defence and others vs. Government of Karnataka rep by its Chief Secretary and others, 2024 SCC Online Kar 1991 [Paras 11.12, 11.13]
62. V.Ramar v. Director of Medical and Rural Health Services, (2011) 1 MLJ 1409 [Para 11]
63. Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1 [Paras 11.12, 11.12]

Advocates Appeared :
For the Petitioner: Sri Girish B.N., Sri Nagarajappa, Advocates.
For the Respondent: Sri Mohammed Jafar Shah, AGA for R1; Sri B.S. Karthikeyan, Advocate for R2 and R3; Sri Lakshmish.G, Advocate for R4.

Statutes Referred :

1. Bruhat Bengaluru Mahanagara Palike Act -- S.257
2. Chennai City Municipal Corporation Act -- S.203
3. Chennai City Municipal Corporation Act -- S.204
4. Chennai City Municipal Corporation Act -- S.259
5. Chennai City Municipal Corporation Act -- S.387
6. Constitution of India -- Art.19(1)(g)
7. Constitution of India -- Art.21
8. Constitution of India -- Art.32
9. Constitution of India -- Art.226
10. Constitution of India -- Art.227
11. Constitution of India -- Art.367

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12. Constitution of India -- Art.372
13. General Clauses Act -- S.2(42)
14. General Clauses Act -- S.367
15. Greater Bengaluru Governance Act -- S.287
16. Indian Electricity Rules -- R.91
17. Indian Penal Code -- S.338
18. Karnataka Municipal Corporations Act -- S.323
19. Karnataka Preservation of Trees Act -- S.8
20. Karnataka Preservation of Trees Act -- S.8A
21. Motor Vehicles Act -- S.140
22. Motor Vehicles Act -- S.163-A
23. Motor Vehicles Act -- S.166
24. National Green Tribunal Act -- S.22

JUDGMENT/ORDER:

Suraj Govindaraj, J. :--

1. The petitioner is before this Court seeking for the following reliefs:

> i) Call for the records relating to representation of the petitioner dated 30.07.2024 &, 30.07.2024 as per Annexure-P & O peruse the same and direct the respondents to pay full and final settlement and also compensation towards his present and future medical and family expenses and his daughter's education expenses of an amount of Rs.5,00,00,000/- (Rupees five crores) in the interest of justice and equity.
>
> ii) And direct the respondents to provide suitable job to his wife as per their promise as early as possible as the petitioner has no any means to lead his family life, in the interest of justice.
>
> iii) And direct the respondents to provide educational expenses towards the petitioner's daughter till her completion of education and direct the respondents to provide a suitable job to petitioner's daughter, after completion of her education, in the interest of justice and equity.
>
> iv) Pass any other suitable order or direction as this Hon'ble Court deems fit to pass in the facts and circumstances of the case, in the interest of justice and equity.

2. The petitioner claims to be a resident of Bengaluru and an employee of KFINTECH, a Private Limited Company, drawing a monthly salary of Rs. 41,212/-. According to the petitioner, on 07.03.2024, at about 10:00 a.m., while he was proceeding to his office, a branch of a Gulmohar tree projecting over the road from the premises of Good

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Shepherd Convent School broke and fell upon his neck. As a result, he sustained severe injuries to his neck and spinal column.

3. Immediately following the incident, the petitioner was taken to Bowring Hospital, where he was provided preliminary treatment. He was thereafter shifted to Sparsh Hospital, Infantry Road, Bengaluru, on 07.03.2024. It is stated that, upon examination and imaging, he was diagnosed with a vertebral/spinal injury and underwent spinal decompression and stabilisation surgery on the same day under general anaesthesia. The petitioner was thereafter shifted to the Intensive Care Unit for observation, subsequently moved to the ward and discharged with a silicone catheter and was advised to undergo physiotherapy and neuro-rehabilitation.

4. The petitioner states that he was thereafter admitted to Sparsh Hospital, Rajarajeshwari Nagar, Bengaluru, from 31.03.2024 to 01.08.2024 for further treatment and rehabilitation. During the said period, he was treated under the Department of Orthopaedics and was diagnosed with traumatic paraplegia. He underwent further treatment and neuro-rehabilitation and was gradually mobilised with the assistance of a thoraco-lumbar brace. According to the petitioner, he incurred approximately Rs. 26,00,000/- towards hospitalisation and treatment during this period, and copies of the medical bills have been produced at Annexure-G to the petition.

5. It is further stated that, even after discharge, the petitioner remained bedridden and was unable to sit or walk independently. He has since been undergoing physiotherapy at Sri Krupa Old Age Home and Nursing Service, for which he claims to be incurring expenditure of approximately Rs. 5,500/- per day.

6. In connection with the incident, a criminal case came to be registered by Ashok Nagar Police Station under Section 338 of the Indian Penal Code, 1860, which has been registered as C.C. No.61833/2024 and is stated to be pending before the Court of the XXIX Additional Chief Metropolitan Magistrate, Bengaluru.

7. The petitioner further states that, while he was undergoing treatment at Sparsh Hospital, Infantry Road, representatives of the school management and officials of the Bruhat Bengaluru Mahanagara Palike (BBMP) visited him. According to the petitioner, they represented that the hospital expenses and other expenses incurred by him would be met and that appropriate financial assistance/compensation would be provided. It is also alleged that assurances were given to provide suitable employment to the petitioner's wife and to bear the educational expenses of his daughter until completion of her education.

8. In furtherance of the aforesaid assurances, and as a token advance demonstrating their bona fides, the BBMP issued a cheque for Rs. 5,00,000/- and the school management issued a cheque for Rs. 3,00,000/-. Both cheques were encashed by the petitioner.

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9. The petitioner contends that, notwithstanding the aforesaid payment and the assurances allegedly extended by the respondents, the remaining hospital and medical expenses have not been reimbursed or otherwise settled. It is further alleged that the respondents have failed to honour their assurances regarding compensation, employment to the petitioner's wife and educational expenses of his daughter. Despite repeated requests and representations, according to the petitioner, no further assistance has been forthcoming.

10. It is in these circumstances that the petitioner has approached this Court seeking the reliefs set out in the petition, principally arising out of the injuries sustained by him on 07.03.2024 and the alleged failure of the respondents to meet the medical expenses and honour the assurances stated to have been extended to him.

11. Sri.Girish B.N., learned counsel for the petitioner, submits that:

11.1. On account of the Gulmohar tree falling on the neck of the petitioner, the petitioner has suffered 85% disability and incurred huge amounts of expenses towards medical treatment, which is required to be paid by the respondents.

11.2. He relies on the decision of the Hon'ble Supreme Court in the case of **Municipal Corporation of Delhi vs. Sushila Devi (Smt) and others** **(1999) 4 SCC 317 : 1999 Legal Eagle (SC) 583** more particularly Paras 1, 2, 13, 14 and 15 which are reproduced hereunder for easy reference:

> **1.** On 18-8-1964, in the evening, late Suresh Chander and his brother Ramesh Chander were going on a scooter from their office to their residence. The deceased was driving the scooter and his brother was riding his pillion. When they were passing against Sant Permanand Blind Relief Mission Building situated at 20, Alipur Road, a branch of the neem tree standing there suddenly broke down and fell on the head of the deceased. His head was crushed. He was rushed to Irwin Hospital where in spite of medical care and attendance, he died the next day at about 10 a.m. A piece of wood was found embedded in his brain for which a surgery had also to be performed on the deceased.
>
> **2.** The deceased was survived by a widow, three minor sons and a minor daughter and his mother. All the six brought a suit for damages claiming Rs 3 lakhs. A learned Single Judge sitting on the original side of the High Court held the Municipal Corporation of Delhi liable for damages in torts and granted a decree of Rs 90,000 by way of compensation payable to the widow and the children of the deceased. Two letters patent appeals were preferred. The Municipal Corporation sought for the suit being dismissed while the claimants sought for enhancement in the amount of compensation. The Division Bench dismissed the appeal filed by the Corporation but at the same time partly allowed the appeal preferred by the claimants enhancing the amount of

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compensation to Rs 1,44,000 payable with interest calculated at the rate of 6 per cent per annum from the date of suit, i.e., 5-8-1966 till 17-9-1970 when the amount was deposited by the Corporation in the court for payment to the successful claimants. The Division Bench also allowed interest at the rate of 3 per cent per annum on Rs 90,000 from the date of deposit in the court till the date of actual withdrawal of the amount by the claimants and interest at the rate of 6 per cent per annum on Rs 54,000 from 17-9-1970 till payment. The reasons for the award of additional interest calculated at the rate of 3 per cent per annum on Rs 90,000 and the legality thereof we shall deal with separately.

13. By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see Brown v. Harrison [1947 WN 191: 63 TLR 484], Quinn v. Scott [(1965) 1 WLR 1004: (1965) 2 All ER 588] and Mackie v. Dumbartonshire County Council [1927 WN 247]). The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In Municipal Corpn. of Delhi v. Subhagwanti [AIR 1966 SC 1750] a clock tower which was 80 years' old collapsed in Chandni Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect," — said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such a tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable.

14. In our opinion the High Court was right in holding the Municipal Corporation negligent in performing its duty under the common law and therefore liable in damages to the plaintiffs for the injury caused to the deceased by fall of the branch of the tree and the consequences flowing therefrom.

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> **15.** The deceased was aged 30. He was employed in a family business wherefrom he was drawing a salary of Rs 650 per month. The learned trial Judge deducted an amount of Rs 150 per month for expenses incurred on the self and assessed the dependency at Rs 500 per month. The Division Bench found that apart from salary the deceased was also getting commission on sales. The net income of the deceased was arrived at Rs 1000 per month wherefrom Rs 200 were deducted as expenses on the self. The dependency was assessed at Rs 800 per month. The learned trial Judge as well as the Division Bench have adopted a multiplier of 15. Thus, the Division Bench has assessed the quantum of compensation at Rs 1,44,000 in supersession of Rs 90,000 assessed by the learned trial Judge. Though, the learned counsel for the Municipal Corporation has assailed the assessment to be on the higher side and the learned counsel for the claimants has submitted that keeping in view the better further prospects of the deceased in the family business, coupled with the youth of the deceased, the monthly income should have been taken at Rs 1826 but we are of the opinion that the figure of compensation arrived at by the Division Bench is a very reasonable figure and calls for no interference. The multiplier has also been correctly adopted. In the leading case of Susamma Thomas [G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1993 Legal Eagle (SC) 7 : 1994 SCC (Cri) 335] this Court adopted a multiplier of 12 when the deceased was aged 39. We do not find any fault with the figure of compensation having been arrived at Rs 1,44,000. The same is upheld.

11.3. By relying on **Sushila Devi**, his submission is that if a tree is standing on the respondent's land which is dried or dead and for that reason may fall and the defect was known to the concerned, the tree being dangerous, the owner would be liable for any damage caused by such a tree and in that background, the Hon'ble Supreme Court held that the Municipal Corporation was negligent in performing its duties and was therefore liable in damages for the injury caused. His submission is that for the purpose of calculation of such damages, it is the principles which are applicable to a motor accident matter, which would be so applicable. His further submission is that there being no requirement for any evidence to be laid, the factum of the accident and the legal liability having been affixed on the Corporation, this Court could apply the principles applicable to a motor vehicle accident and direct the Municipal Corporation to make payment of the compensation.

11.4. He relies upon the judgment of the Division Bench of the Hon'ble Madras High Court in the case of **The Commissioner, Corporation of Chennai vs. The State of Tamil Nadu and K. Karthik**[1] more particularly Paras 3, 4, 5, 7, 15, 16, 17, 18, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39 and 43, which are reproduced hereunder for easy reference:

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3. Facts leading to the appeal are that the second respondent/petitioner, a minor, aged about 14 years, lost his parents on 12.10.2005, due to sudden fall of a tree on the Maruti Car, in which they were travelling, near Dr. Alagappa Road, Purasawalkam, Chennai. In the said accident, the car was crushed, which resulted in instant killing of his parents. The fatal accident and the consequential death of his parents would not have taken place, had the officials of the appellant Corporation exercised proper care and caution and taken precautionary measures, to cut and remove, old and dangerous trees standing, on both sides of the road.

4.Before the Writ Court, it is the contention of the second respondent/petitioner that at the time of accident, his father was a Masters Degree holder in Urban Engineering, with distinction, and was pursuing Ph.D in Anna University. He was working as Assistant Director, in the office of the Director, Highways Research Station, Chennai-32, and drawing a salary of Rs.18,526/- per month. His mother with M.A., B. Ed. and M. Phil degree, was a teacher in P.M.R. Higher Secondary School, Mugappair, Chennai, and earned a sum of Rs.2,500/- per month.

5. The Second respondent/petitioner submitted that, on 12.10.2005, when they were returning to home, after purchase, from Madharsha Textile Show Room, the car was driven slowly and cautiously, his mother was seated, in the front seat, the second respondent/writ petitioner was seated in the back seat of the car. About 6.30 p.m. when the car approached, Mutt Street, Dr. Alagappa road, a big tree standing on the left side of the road, fell on the car, crushed the car and caused the death of his parents. As the second respondent/petitioner was sitting in the back seat, he escaped with grievous injuries.

7.It is also his case that after the said fatal accident, was reported in almost all the newspapers and TV channels on 12.10.2005, officials of the Corporation of Chennai during the last week of October, 2005, found that there were 877 trees, which stood in such dangerous condition, which might fall, at any time, and decided to cut and remove them. The said decision of the appellant Corporation taken in the last week of October, 2005, was also reported in newspapers. Before the writ court, the second respondent has submitted that had the appellant Corporation taken the said decision earlier, lives of the parents of the writ petitioner could have been saved. Thus, he has contended that the officials of the Corporation, appellant herein were responsible for the death of his parents, as they had failed to discharge their statutory duty.

15. Assailing the correctness of the order of the writ couort dated 04.06.2012, Corporation of Chennai, has filed this appeal Ms. Karthikaa Ashok, learned

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counsel for the appellant Croporation submitted that since the issue relates to a question of fact, and subject matter has to be decided, after a full trial, before the court of civil jurisdiction, after examination of witnesses, and without examining any evidence, the vital aspects of negligence and liability or even a no fault liability cannot be arrived at, in writ jurisdiction. Applellant has also raised a question, as to whether the driver of the vehicle i.e. writ petitioner's father had a valid driving licence at the time of the fatal accident. She submitted that the employment of the parents of the writ petitioner, their qualification, expectation of livelihood and income, were all matters to be proved before the Civil Court, before arriving at a quantified sum.

16. Learned counsel for the appellant further contended that insofar as the alleged negligence on the part of the appellant is concerned, the same can be decided only after examination of the witnesses, where facts, can be established. According to her, even assuming that when the deceased father of the 2nd respondent/writ petitioner was driving the vehicle, on that fatal day, and that the tree on the road margin fell down, due to heavy rain, storm and winds, a natural calamity, totally unforeseen that caused the tree to uproot from its position, she submitted that it is an "Act of God", for which, the appellant is liable to pay compensation.

17. It is the further contention of Ms. Karthikaa Ashok, learned counsel for the appellant that the writ court ought to have seen that trees on road margins, streets, public areas and within the limits of Chennai Corporation are inspected, in a routine manner and there was no proof that the fallen tree was whithering or in a worn out condition. It is also her contention that the writ court ought to have taken note that there were no previous complaints with regard to the alleged poor maintenance of trees or any information that the alleged tree was about to fall. It is also the contention of the learned counsel for the appellant that the writ court, ought to have considered that the affidavit filed by one Poongavanam, on the complaint given, for felling of trees, required to be attended by the appellant by the Corporation. She also submitted that the writ court should have appreciated the fact that every year, the appellant Corporation identifies the trees that pose imminent danger to the general public, and remove the same, with diligence.

18. Ms. Karthikaa Ashok, learned counsel for the appellant Corporation further submitted that the writ court has erred in holding that enumeration of dangerous trees was done only in the month of October 2005, after the incident, and out of 877 trees, and one of them was the tree, which fell on the car. She further submitted that the appellant's defence on Act of God has been neglected by the writ court, without valid reasons. She has further submitted

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that the writ court has failed to consider that there was a factual dispute, with regard to negligence, strength of the tree and danger.

22. Perusal of the order impugned, makes it clear that on 12.10.2005, when the second respondent/writ petitioner, along with his parents, was travelling in a Maruti car on Dr. Alagappa Road, Purasawalkam, Chennai, a tree, leaning towards the road, fell on the car resulting in the death of his parents and causing injuries to the second respondent, who was aged 14 years, at the time of accident. A case in Crime No.969/2005 under Section 174 of the Code of Criminal Procedure, 1863, has been registered in G3, Kilpauk Police, Chennai -10. A sum of Rs.50,000/- each, for the death of father and mother of the second respondent has been sanctioned on 03.12.2005 from the Chief Minister's Relief Fund.

24. After considering the above facts, writ court, has arrived at a finding that no enumeration of dangerous trees on the roadside was done by Corporation officials before the commencement of monsoon and that there was negligence on their part, which resulted in falling of a tree on the Maruti car, causing the death of the parents of the writ petitioner. On the contention that the accident occurred due to natural calamity, Act of God and that no liability can be fastened on the Corporation to pay compensation, the writ court, has considered the statutory duty enjoined on the Corporation of Chennai in terms of Section 259 of the Chennai City Municipal Corporation Act, 1919, which mandates the Corporation to remove dangerous trees even if the trees were standing in a private place. Section 259 reads as follows:

"Section 259. Precautions in case of dangerous trees. - (1) If any tree or any branch of a tree of the fruit of any tree be deemed by the commissioner to be likely to fall and thereby to endanger any person or any structure, the commissioner may, by notice, require the owner of the said tree to secure, lop or cut down the said tree so as to prevent any danger therefrom.

(2) If immediate action is necessary, the commissioner may himself, before giving such notice or before the period of notice expires secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or take such temporary measures, as he thinks fit to prevent danger, and the cost of so doing shall be recoverable from the owner of the tree in the manner provided in section 387."

25. The writ court has also taken note of the fact that trees standing on public streets shall vest with the Corporation as per Section 203 of the Act. Writ court has also considered that as per Section 204 of the Act, it is the duty of the Corporation to maintain, repair and make all improvements, which are

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necessary or expedient for public safety and convenience. From the above referred statutory provisions, it is manifestly clear that the Corporation is responsible for removing the dangerous trees for public safety. Thus the writ court held that the said statutory duty was not performed by the appellant Corporation, due to which, the petitioner's parents died on 12.10.2005.

26. On the contention of Act of God, at paragraph No.13 of the order in W.P. No.20081 of 2007 dated 04.06.2012, the writ court, has further observed that enumeration of dangerous trees standing on the road sides was taken up by the officials of the Corporation only during the last week of October, 2005, i.e, after the incident which took place on 12.10.2005. During enumeration it was found that 877 trees were to be cut and removed and 85 trees had fallen already, including the one on the Maruthi Car driven by petitioner's father on 12.10.2005. Writ court has further observed that had the enumeration been taken prior to the accident and dangerous trees were cut and removed prior to 12.10.2005, the officials of the appellant Corporation could possibly plead that they have taken all precautions/care to remove dangerous trees and the particular tree fell down due to heavy rain/storm, may be treated as Act of God. Writ court held that the officials of the appellant having failed to take enumeration and to cut and remove the dangerous trees, are not expected to plead that the death of the second respondent's parents is by Act of God. Thus, the writ court held that there was negligence on the part of the officials of the appellant in not cutting and removing the dangerous trees and two precious lives were lost, and therefore held that appellant is liable to pay compensation for the loss sustained by the second respondent for the death of his parents on the principle of "vicarious liability".

27. On the aspect as to whether the State or its instrumentality is bound to protect the person and property of every citizen and if it fails to discharge its duty, whether the State is liable to pay damages to the victims, the writ court has considered the principles of law decided by the Hon'ble Supreme Court in the decision reported in 2010 (3) LW 421

(SC) (Eureka Forbes Limited v. Allahabad Bank & Others) (para 44 & 45).

28. On the aspect as to whether payment of compensation can be ordered by the writ court in appropriate cases under Article 226 of the Constitution of India, particularly, when there was no factual disputes, writ court has considered the following decisions.

(i) In AIR 2000 SC 988: (2000) 2 SCC 465 : 2000 Legal Eagle (SC) 205 (Chairman, Railway Board v. Chandima Das), a sum of Rs.10 lakhs was awarded as compensation to a Bangladeshi National, who was sexually assaulted by Eastern

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Railway Employee. Order of the High Court awarding the said compensation was upheld by the Supreme Court.

(ii) In AIR 2001 SC 3668: (2001) 8 SCC 151 : 2001 Legal Eagle (SC) 1076 (M.S. Grewal v. Deep Chand Sood), Rs.4.10 lakhs each was awarded for the unfortunate death of 14 young children, who died due to drowning in a river, when they were on picnic organised by the School authorities.

(iii) In (2005) 9 SCC 586 (MCD v. Association of Victims of Uphaar Tragedy) the Supreme Court ordered payment of compensation to the families of those, who died in Uphaar Tragedy and directed the MCD to deposit Rs.3,01,40,000/- (Rupees Three Crores One lakh and Forty thousand) and 50% of the said amount was directed to be distributed to the Claimants.

(iv) In 2011 AIR SCW 4916 : 2011 Legal Eagle (SC) 568 (Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers), the Supreme Court enhanced the compensation awarded by the High Court of Delhi to sewerage workers' family to Rs.3.29 lakhs, over and above Rs.1.71 lakhs already paid by the Government.

29. The writ court has also considered the decisions of this court:

(a) 2001 WLR 174 (C. Chinnathambi v. State of Tamil Nadu) - Rs.1.50 lakhs with 12% interest was ordered to be paid to each school students, who died while water tank broke and fell on them.

(b) 2004 WLR 346 (Smt. R. Dhanalakshmi v. Government of Tamil Nadu) - Rs.9.00 lakhs was ordered to be paid to the family of a prisoner, who was killed while in custody.

(c) 2004 WLR 611 (DB) (The Chief Secretary to the Government of Tamil Nadu v. Mrs. R. Selvam) - Rs.5.00 lakhs was ordered to be paid by the State due to the killing of a medical student inside the Government Medical College Hostel.

(d) 2006 WLR 13 (DB) (C. Thekkamalai v. State of Tamil Nadu) - The Division Bench enhanced the compensation from Rs.75,000/- to Rs.5.00 lakhs for the rape victim, who was illegally arrested and raped.

(e) 2006 WLR 608 (Lakshmana Naidu (decd) v. State of Tamil Nadu & Another) - A sum of Rs.5.00 lakhs was ordered as compensation to the family of the deceased.

(f) 2008 (6) CTC 144 (P.N. Kanagaraj v. Chief Secretry, State of Tamil Nadu) - Rs.4.10 lakhs with 9% interest was ordered for the death of a school boy.

(g) 2009 (1) CTC 434 (Subramaniam v. State of Tamil Nadu) - A sum of Rs.3.50 lakhs was directed to be paid for the death of a student in the school due to

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negligence of the Government School Teacher.

(h) 2010 WLR 851 (DB): 2010 (1) CWC 455 (T. Sekaran v. State of Tamil Nadu & Others) - A sum of Rs.9,07,000/- was directed to be paid to the family of a person, who was shot dead by the Security Warden of Madurai Central Prison.

(i) 2011 (1) CWC 786 (The Registrar Administration, Madurai Bench of Madras High Court v. Secretary to Government, Home Department) - A sum of Rs.10 lakhs was ordered to the family of an advocate, who died due to not providing immediate medical treatment, in the High Court premises.

(j) 2011 (6) CTC 636 (P. Ravichandran v. The Government of Tamil Nadu) - A sum of Rs.18.00 lakhs was ordered as compensation to the victim, who suffered 100% disability while doing drainage work.

(k) 2012 (2) CTC 848 (Ganesan v. The State of Tamil Nadu) - A sum of Rs.10.00 lakhs was ordered to be paid by the State to the family of a victim, who died due to bomb attack while travelling in a Transport Corporation Bus.

(l) In (2011) 1 MLJ 1409 (V. Ramar v. Director of Medical and Rural Health Services) this Court directed the State to pay a sum of Rs.5.00 lakhs to the family of a woman, who died during delivery due to the negligence of the Government Hospital authorities.

(m) In (2011) 1 MLJ 1329 (Thangapandi v. Director of Primary Health Services) A sum of Rs.5 lakhs was ordered to the family of a woman, who died after delivery, due to not giving proper treatment by Government Hospital Doctors.

(n) In W.P. No.23003 of 2011 dated 24.11.2011 this Court awarded a sum of Rs.10.00 lakhs to the family of a deceased student as he was killed while staying in Government Hostel.

30. On the above aspect, it is worthwhile to consider few cases on public law remedy, under Article 226 of the Constitution of India:

(i) In State of Rajasthan v. Vidhyawati reported in 1962 Supp (2) SCR 989, it has been held that:

“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 authorising 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

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be sued in tort or in contract, and the Common Law immunity never operated in India."

(ii) In Joginder Kaur v. Punjab State reported in 1969 ACJ 28 (P & H) wherein it has been observed that:

"In the matter of liability of the State for the torts committed by its employees, it is now the settled law that the State is liable for tortious acts committed by its employees in the course of their employment."

(iii) In Nilabati Behera v. State of Orissa [1993 (2) SCC 746 : 1993 Legal Eagle (SC) 269], the Hon'ble Apex Court held thus, "Award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution." [Emphasis supplied] Dr. A.S. Anand J., (as he then was) in his concurring judgment elaborated the principle thus:-

" The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law and is based on the strict

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liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law. "

(iv) In Chairman, Grid Corporation of Orissa Ltd., Vs. Sukamani Das, reported in 1997 (7) SCC 298, the Hon'ble Supreme Court held that the fact relating to the proper maintenance of transmission lines and snapping of wire where it is beyond the control of the Grid Corporation or due to unauthorised intervention of third parties or as to whether the deceased had not died in the manner stated in the Writ Petition requires factual appreciation and that cannot be settled under Article 226 of the Constitution of India on the basis of affidavits only. In that case the Grid Corporation of Orissa against which the claim of compensation for the death caused to the deceased due to its negligence had been raised. The Grid Corporation has denied the accident and also contended that it was due to the intervention of the third parties, the electric wire got snapped resulting in electrocution. While the High Court has granted compensation on the basis that it was the duty of Grid Corporation of Orissa to maintain electric lines in a proper manner and the non-maintenance would amount to negligence, the Supreme Court, while reversing the said judgment held that it was the specific case of the Grid Corporation of Orissa in their counter affidavit that because of the thunderbolt and lightning one of the conductors of the 12 W LT line had snapped even though proper guarding was provided. It was also the specific case of the Grid Corporation of Orissa that the deceased died due to the lightning and not because of his contact with snapped live wire. It was only on the basis of the factual situation, the Hon'ble Apex

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Court has held that the High Court ought not to have granted compensation while exercising jurisdiction under Article 226 of the Constitution of India. At paragraph 6, the Supreme Court has held as under:-

6.In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that admittedly/prima facie amounted to negligence on the part of the appellants. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No.5229 of 1995.

(v) Though Ms. Karthikaa Ashok, learned counsel for the appellant placed reliance on the above judgment to contend that a writ petition is not maintainable, when facts are disputed, this Court is not inclined to accept the same, for the reason that in the reported case, it is the conclusion of the electricity department that the deceased therein got electrocuted, due to intervention of the third parties and that proper guarding was done. Whereas, in the case on hand, the mere fact that enumeration, cutting and removal of trees, done after the incident, amply proves that proper care and precautionary measures have not been done earlier. The accident was not due to any third party intervention.

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(vi) In Nirmala Thirunavukkarasu Vs. Tamil Nadu Electricity Board, reported in 1997 L.W. 42, after considering the maxim 'res ipsa loquitur' Hight court held that the usual plea of `Act of God' or mechanical failure cannot be considered as a defence while deciding a case for compensation arising out of electrocution. In cases of negligence, relating to electrocution, it was held that in order to render justice to the parties, the general rules as to damages to be construed liberally and not with rigidity. It was also held that the Courts should take into consideration not allowing a calamity to turn into a windfall and the amount of compensation should be decided only with reference to pecuniary loss.

Issue No.4: As the deceased has died as a result of the negligence of the defendants, they are bound to pay compensation to the plaintiffs for the loss suffered by them. Now to the quantum of compensation. The amount of money as reparation for the results of tortious conduct for which the law holds the wrong doer responsible is determined by applying as far as possible the general principle of restitution integrum. In many cases, however, a perfect compensation is hardly possible and would even be unjust. The court in doing justice between the parties considers the general rules as to damages with some liberality and does not apply them rigidly, and, thus, the damages are in difficult case normally limited to a sum which can in the circumstances be considered as a reasonable amount of compensation. Courts should not also in such cases allow a calamity to turn into a windfall. In ascertaining the pecuniary loss caused to the dependants, it must be borne in mind that these damages are not to be given as solatium for the loss of a son or daughter, wife or husband, father or mother, not on sympathetic or sentimental consideration, but only with reference to pecuniary loss.

(vii) S. Paramasivam Achari Vs. The Head Master Govt.High School, Amur, Musiri Taluk, Trichy District and others reported in 1999 Writ L.R.525, the petitioner son had gone to the urinal attached to the school within the campus. The boy died due to the sudden collapse of the wall. It was held that the accident could have been averted, if the school had taken proper care. Therefore, a compensation of Rupees Two Lakhs was directed to be paid by the Government.

(viii) In D. Matsa Gandhi Vs. Tamil Nadu Slum Clearance Board, reported in 2000 (III) CTC 24, this Court held that in cases where there is denial of tortious liability writ petitions cannot be maintained. However, when negligence per se is visible the same has to be construed as violation of right to life and liberty guaranteed under Article 21 of the Constitution of India and the High Court has jurisdiction to grant compensation under Article 226 of the Constitution of India. At paragraph 10, this Court held as follows:-

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10.In the course of argument it is brought to my notice the recent decision of the Hon'ble Supreme Court reported in Nath Bros., Exaim International Ltd., v. Best Roadways Ltd., 2000 (4) S.C.C. 553 : 2000 Legal Eagle (SC) 584 and power of this Court under Article 226. No doubt, the Hon'ble Supreme Court has not accepted the action of the High Court in granting compensation to the family of the victim who died by electrocution in a writ petition filed under Article 226. It is equally true that when disputed questions of fact arises and if there is clear denial of tortious liability remedy under Article 226 of the Constitution may not be proper. However, in the very same judgment their Lordships after saying so, in paragraph 10 have observed.

"…. However it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution."(Italics Supplied)

In such circumstance and in view of the factual conclusion as referred to above, I am of the view that the petitioner is entitled reasonable compensation from the respondent for the death of her daughter and in the interest of justice this Court would be justified in considering the relief prayed by the petitioner.

After considering the above decision and also of the objections raised by the Tamil Nadu Electricity Board as regards the maintainability of the writ petition and also of the fact as to whether the petitioner therein should be driven to a Civil Court, on the facts and circumstances of the case, a learned single Judge of this Court in an unreported decision in R. Saroja Vs. The Chairman, Tamil Nadu Electricity Board, Chennai, and two others (W.P. No.6437 of 1998 dated 16.04.2008), "The factum of electrocution and the death of the petitioner's husband is not denied either by the 1st respondent or by the 2nd respondent, I am of the considered view that it is not proper at this point of time, especially, when the accident took place in the year 1997 and the writ petition was filed in the year 1998 and the same has been pending for the past 10 years to drive the parties to Civil Court. Such course will only cause further injury to the family of the deceased."

So saying, this Court has awarded compensation.

(ix) C. Chinnathambi and others V. The state of Tamil Nadu rep.by its Secretary to Government Education, Science and Technology Department, Fort St.George Madras - 600 009 and others reported in 2001 Writ L.R.174, a water tank constructed by the School during

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1983-1984, due to faulty construction collapsed on 12.10.1992. In that accident two school children were died. Because of the lack of care by the School management, the School was directed to pay compensation. In that case, V.S.SIRPURKAR.J. (as he then was) in para nos 5 and 6, observed as follows:- "5.Right of life enunciated in Article 21 has time and again been recognised by the Supreme Court and in its various ramifications. This was a case where the two innocent children had gone to the school and the accident actually took place during school hours. Even if it is considered that the said tank was constructed by the Parent Teachers Association it was undoubtedly the responsibility of the School authorities to see that the tank was properly constructed and erected and that it should not have been hazardous to the lives of the children. There can be no dispute that in this case school authorities have not been careful enough to see that the construction was proper and in keeping with the rules. It beats one's understanding as to how a tank which was constructed early in 1983-84 would collapse all of a sudden within eight years of its construction. i.e.12.10.1992. The things do speak for themselves. There can be least doubt that the school authorities were not vigilant in their duties and that this being the Government School the Government would have a liability. There is no dispute that two young lives have perished predominantly because of the lack of care on the part of the school authorities. In my opinion compensation of Rs.5,000/- by way of ex gratia payment would be a cruel joke. The petitioners have claimed the compensation of Rs.1,50,000/- each in their writ petitions.

6.Considering the age of the children, the social background that they come from the fact that these children were bona fide students and could have had a bright future, the compensation of Rs.1,50,000/- shall be on the lower side. I, therefore, allow both the writ petitions and direct the Government to make a payment of Rs.1,50,000/- to each of the petitioners within two months from today. If the payment is not so made, it shall carry interest at the rate of 12% p.a. till the actual payment is made.'

(x) In M.S. Grewal Vs. Deep Chand Sood, reported in AIR 2001 SC 3660 = 2001 (8) SCC 151 : 2001 Legal Eagle (SC) 1076 , the issue before the Hon'ble Supreme Court was regarding the direction given by the High Court to pay a sum of Rs. Five lakhs as compensation to the parents of each of the children who died on account of drowning while they were

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in the custody of the school authorities. While considering the maintainability of the Writ Petition for payment of compensation, the Hon'ble Supreme Court indicated the march of law on the subject of public law remedy thus:

"28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affectation of the people has been taken note of rather seriously and the judicial ' concern thus, stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil Court's obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach." Law Courts will lose their efficacy if they cannot possibly respond to the need of the society - technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

(xi) In Rabindra Nath Ghosal Vs. University of Calcutta, reported in AIR 2002 SC 3560 = 2002 (7) SCC 478 : 2002 Legal Eagle (SC) 832 , the Hon'ble Apex Court indicated the obligation of Courts to meet the social aspiration of people,:

"9. The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 225 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against, public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties, unless there is malice or conscious abuse. Before exemplary damages

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can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."

(xii) In Susanta Samanta and others Vs. WBSEB and others, reported in AIR 2004 Calcutta 200, death was due to electrocution. A writ petition was filed for compensation. Public law remedy was opposed. Negligence was also attributed against the deceased. On the objections to the maintainability of the writ petition, it was contended as follows:-

"8. Mr. Sumit Panja learned Lawyer appearing for the respondents contends that there is no dispute that the Court has ample power under Article 226 in the public law field to award compensation on the established and admitted case of negligence on the part of the respondent No. 1. In this case it is totally incorrect to allege that the said deceased died owing to negligence of the respondent No. 1. The Criminal case was dropped and this shows there was no fault not to speak of negligence, and it was mere an accident which might have occurred due to his own fault. In view of this serious disputed question of fact this Court cannot award any compensation unlike Apex Court under Article 142. What the Apex Court can do under Article 142 cannot be done by the High Court even overstretching power under Article 226 of the Constitution of India. He submits that the decision cited by the learned Lawyer for the petitioner of the Supreme Court is not a binding precedent and it was rendered on taking special facts and circumstances into consideration and the Apex Court had explained expressly not to treat this judgment as a precedent. He submits the Supreme Court explained in fairly recent decision under what circumstances the High Court can grant compensation in the public law field under Article 226 of the Constitution of India. In support of his submission he has relied on the decision of the Supreme Court reported in 2000 (4) SCC 543 : 2000 Legal Eagle (SC) 851 = AIR 2000 SC 1603, AIR 1996 Kerala 337, 1994 (2) SCC 630 : 1993 Legal Eagle (SC) 1046 = AIR 1994 SC 1808 and 1999 (9) SCC 40 : 1999 Legal Eagle (SC) 717 = AIR 2000 SC 3638.

After considering Tamil Nadu Electricity Board Vs. Sumathi, reported in 2000 (4) SCC 543 : 2000 Legal Eagle (SC) 851 , a learned single Judge of the Calcutta High Court in Susanta Samanta's case at paragraph 10 held as follows:-

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10. Therefore, it is clear from the aforesaid decision of the Supreme Court that it is not a bar to grant relief in the public law field in exercise of jurisdiction under Article 226 in case of the deprivation of life due to negligence on the part of the State, which includes statutory authority. The only decision cited by the learned Lawyer for the petitioners cannot be accepted to be precedent in view of the expressed pronouncement of the Supreme Court itself in the penultimate sentence of the last paragraph.

(xiii) In Chairman, Tamil Nadu Electricity Board, Madras and the Superintending Engineer, Tamil Nadu Electricity Board, Thiruvannamalai Vs. Mrs. Lalitha and two others, (A.S. No.20 of 1996, dated 23.11.2007), Legal Representatives of one V. Shanmugam, who died on 27.09.1989, claimed compensation. According to them, while he set his foot on a severed live electric wire that had fallen on an agricultural field, belonging to one Munuswamy Naidu in S.U. Vanam, Arni Taluk, he died of electrocution. It was reported to the police, FIR was registered and postmortem was conducted. A suit was filed for compensation. It was defended that there was heavy rain and wind, which started in midnight on 26.09.1989 and continued till next day morning. As there was sudden rain and speedy wind, without any prior symptom, the department could not take steps to switch off power supply. Service connection in S.C. No.33 was not under use and the concerned consumer had not intimated to disconnect the electric line, otherwise, the appellants could have taken immediate steps to disconnect the line and restore its original position. After considering Rule 91 of the Electricity Rules, and on the facts and evidence, this Court at paragraphs 14 to 16 held as follows:-

14. It is clear that Rule 91 of the Indian Electricity Rules, 1956 stipulates that every overhead electric line erected over any part of a street or other public place or any factory or mine or any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. It is seen that the electrocution had occurred only in the open place of the village and a poor man and his dependents were made victims.

15. Considering the heavy rain and storm and also the non usage of the electric service for a long time by the consumer, as admitted by the appellants in the written statement the same should have been disconnected or at least the particular service connection could have been switched off, on account of the heavy rain and storm. On the

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facts and circumstances of the case and also the evidence available on record, I am of the view that the principle of res ipsa loquitur is applicable to infer that the electrocution and the instantaneous death of V. Shanmugam, husband of the first respondent and the father of the minor respondents 2 and 3 had occurred only due to the negligence of the Electricity Board.

16. It is seen that the mandatory safety measures stipulated under Rule 91 of the Indian Electricity Rules, 1956 were not complied with by the concerned officials of the appellants, which had caused the death of the husband of the first respondent. The plea of the appellants that it was an act of God or nature cannot be taken as any legal defence."

(xiv) In Lilly Stanislaus Vs. The Chairman, Tamil Nadu Electricity Board, Chennai and three others, reported in 2008 WLR 278, the petitioner's husband went out to procure milk from the nearby Aavin Milk Booth. It is the case of the petitioner therein that earlier, there was heavy rain and when her husband was passing near a tea shop, he had to step on a live wire, snapped from the electrical post No.146 and was thrown out due to electrocution. A boy who tried to pull him out, also was electrocuted. Two hours later, electric supply was disconnected. In the meantime, the petitioner's husband died. A complaint was lodged to the Sub Inspector of Police, G-1, Madhavaram Police Station. FIR was registered in Crime No.559/96. In the postmortem conducted on 17.06.1996 it was found that there was blackening and charring of skin. The cause of death was due to electrocution. The petitioner therein contended that due to negligence, carelessness and failure to perform duty on the part of the board officials in maintaining electric posts properly, the accident occurred resulting in the death of her husband. It was also contended that there was negligence in not maintaining the electric poles with automatic fuse. The board disputed the contentions and inter alia contended that the poles, wires were in good condition. It was also contended that the accident took place due to heavy rain and that it is an Act of God, beyond the control of the electricity board and that therefore there was no negligence on the part of the respondent board. Placing reliance on M.P. Electricity Board Vs. Shail Kumari and others, reported in 2002 (2) SCC 162 : 2002 Legal Eagle (SC) 29 , Smt. Kumari Vs. State of Tamil Nadu and others, reported in AIR 1992 SC 2069, M.C. Mehta Vs. Union of India, reported in AIR1987 SC 1086, Tamil Nadu Electricity Board Vs. Sumathi and others, reported in 2000 (4) SCC 543 : 2000 Legal Eagle (SC) 851 and an

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unreported decision in P. Kumaraesan Vs. Tamil Nadu Electricity Board and others, (W.P. No.10310 of 1999 dated 31.07.2006) and Parezade Mama Vs. State of Tamil Nadu, rep. by Secretary to Government, Electricity Department and others (W.P. No.5217 of 1999 dated 05.01.2007, it was contended that the High Court or the Supreme Court in exercising the powers under Articles 226 and 32 of the Constitution, can award compensation in the case of infringement of right. Though the Electricity Board contended that tortuous liability cannot be fixed on the electricity board and that writ petition cannot be entertained, as there was dispute regarding negligence on the part of the board and that the accident was an Act of God, beyond the control of Electricity Board, upon consideration of the medical evidence, which proved that the death was due to electrocution, at paragraphs 11 to 14, Hon'ble Mr. Justice Jyothimani, held as follows:-

11. It is also not in much dispute that the petitioner's husband was the only bread-winner of the family and the petitioner has three children out of whom one daughter got married and there is one unmarried daughter and an un-married son. It was held by the Hon'ble Supreme Court in M.P. Electricity Board vs. Shail Kumari and others [2002 (2) SCC 162 : 2002 Legal Eagle (SC) 29] that the liability of the Electricity Board under Law of Torts to compensate for the injuries suffered cannot be denied on the basis that the Electricity Board has taken all safety measures since the liability of the Department is strict liability, relying upon the renowned and celebrated case on the issue, viz., Rylands vs,. Fletcher (1868 (3) HL 330: 1861-73 All ER Rep.1). The Supreme Court has held as follows:

"8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not

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relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

9. The doctrine of strict liability has its origin in English common law when it was propounded in the celebrated case of Rylands v. Fletcher (1868 (3) HL 330: 1861-73 All ER Rep.1). Blackburn, J., the author of the said rule had observed thus in the said decision: (All ER p. 7E-F) " [The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape."

Therefore, it is too late for the respondent Board to raise the plea as if the respondent Board is not negligent and they are not liable.

12. In Tamil Nadu Electricity Board vs. Sumathi and others (2000 (4) SCC 543 : 2000 Legal Eagle (SC) 851), even though the Hon'ble Supreme Court has held that in cases of disputed questions of fact in existence, on the face of unequivocal denial of tortious liability, seeking remedy under Article 226 may not be proper, it was held that the same cannot be understood that in every case of tortious liability the affected party should be directed to resort to filing of suit, holding that when there is negligence on the face of it, the same to be treated under Article 21 of the Constitution of India and in such circumstances, to enforce the basic human rights, Article 226 can be pressed into service. On the facts of the said case, the Supreme court has come to the conclusion that a disputed questions of fact was involved, but held in the circumstances of the case that the appellant Electricity Board shall not recover the amount which has been paid to the respondents/victims. In that context, the Supreme Court has held as under:

"10. In view of the clear proposition of law laid by this Court in Sukamani Das case (1999 (7) SCC 298 : 1999 Legal Eagle (SC) 988) when a disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under

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Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey (1999 (1) SCC 741 : 1998 Legal Eagle (SC) 1176 : 1999 SCC (L&S) 389) where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. This Court then observed:

(SCC pp. 758-59, para 27)

"[It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is

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clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226."

13. In yet another case in Smt. Kumari vs. State of Tamil Nadu and others (AIR 1992 SC 2069), when a six year old boy of the appellant died falling in a 10 feet deep uncovered sewerage tank in the City of Madras and the writ petition filed by the appellant was dismissed by the High Court, while setting aside the said judgement, the Supreme Court has directed the State Government to pay compensation of Rs.50,000/- with interest to the appellant, however with a direction that the State Government can recover the said amount from appropriate authority, since the authority who is liable for negligence was not able to be determined. The operative portion of the above cited judgement is as follows:

"3. In the facts and circumstances of this case we set aside the High Court judgement and direct that respondent 1, the State of Tamil Nadu shall pay to the appellant a sum of Rs.50,000 (Rupees fifty thousand) with interest at 12 per cent per annum from January 1, 1990 till the date of payment. The amount shall be paid within six weeks from today. It will be open to the State of Tamil Nadu to take appropriate proceedings to claim the said amount or any part thereof from any of the respondents or any other authority which might be responsible for keeping the sewerage tank open. The claim, if made, will be decided in

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accordance with law. The appeal is allowed in the above terms. There will be no order as to costs.

14. A Division Bench of this Court (P.K. Misra and S. Rajeswaran,JJ) in W.P. No.5217 of 1999 (Parezade Mama vs. State of Tamil Nadu rep. By Secretary to Government, Electricity Department and others), while dealing with the case of death of the mother and father of the children, who died when the children playing in a lodge were to touch the running over head high tension line approximately 3 feet from the balcony of the lodge and the parents while attempted to rescue the children, by relying upon the judgement of the Supreme Court in Nath Bros. Exim International Ltd., vs. Best Roadways Limited (2000

(4) SCC 553) held that on the face of the conduct of the public authority, there is infringement of Article 21, and there is no bar for the High Court to proceed under Article 226 of the Constitution of India by granting necessary damages, as follows:

"17. It is true that writ petitions for claiming damages cannot be resorted when there is a clear denial of tortious liability. At the same time when the negligence is per se visible and it infringes Article 21, relief claiming damages could be granted under Article 226 of the Constitution of India.

18. In 2000 (4) SCC 553 : 2000 Legal Eagle (SC) 584 (Nath Bros. Exim International Ltd. vs. Best Roadways Ltd.,), the Hon'ble Supreme Court no doubt held that the writ petition filed under Article 226 of the Constitution of India, High Court cannot grant compensation to the family of victim who died by electrocution. However, in the very same judgement the Hon'ble Supreme Court held that when there is negligence on the face of it and infringement of Article 21 is there, it cannot be said there will be any bar to proceed under Article 226 of the Constitution of India."

Ultimately, leaving it to the appropriate forum to decide the final compensation, an interim compensation of Rs.2 lakhs was awarded in the following terms.

"22. Therefore, in our opinion negligence on the part of the Electricity Board, municipality and the lodge is per se visible and this negligence definitely infringes Article 21 of the Constitution of India and therefore we are of the considered opinion that interim compensation can be awarded in this writ proceedings, leaving the final quantum to be decided by an appropriate forum.

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23. Considering the nature of the extensive injuries suffered by the minor children, the loss of their parents and the exorbitant medical expenses, to rehabilitate the children we award a sum of Rs.6 lakhs in total to be paid equally by the municipality- 4th respondent, Tamil Nadu Electricity Board (second respondent) and the lodge-6th respondent. As such, each of them shall pay a sum of Rs.2 lakhs as interim compensation to respondents 9 and 10 within a period of three months from the date of receipt of a copy of this order."

(xv) In Smt. S.K. Shangring Lamkang and another Vs. State of Manipur, reported in AIR 2008 Gauhati 46, a writ petition was filed by the widows for the death of their respective husbands, who died, due to falling of a high tension electric line from its pole while they were proceeding in a Scooter. According to the petitioners therein, the electric line was broken and detached from its pole as it was very old and also not repaired, despite request made by one R.D. Kowar Anal, Chairman, Chief Area Association of Sulam Chandel on 18-4-2002 to respondent No.3 therein, for repairing the electric post, as well as the weakness of the electric wire between Khongjon village and Bongku village. The case of the petitioners was that, had the respondents taken appropriate steps in respect of the electric post and wire, falling of the wire would not have taken place leading to electrocution, resulting in death of two persons. The respondents contended that the fall of the electric wire was due to the lightning stroke resulting breaking of a tension disc Insulator and not due to the negligence of the respondents. According to the respondents, no one complained to respondent No.3, for repairing the electric post and the weakness of electric wiring at or near the place of occurrence. It was the case of the respondents that since there are disputed questions in respect of negligence, it will not be proper on the part of the writ Court to award any compensation in exercise of its power under Article 226 of the Constitution of India. Reliance was placed on Chairman, Grid Corporation of Orissa Ltd., Vs. Sukamani Das. After considering the subsequent decision of the Supreme Court in Tamil Nadu Electricity Board Vs. Sumathi, reported in 2000 (4) 543, Parvati Devi Vs. Commissioner of Police, Delhi reported in 2000 (3) SCC 754, M.P. Electricity Board Vs. Shail Kumari, reported in 2002 (2) SCC 162 : 2002 Legal Eagle (SC) 29 , a Hon'ble Division Bench of the Gauhati High Court, at paragraphs 8 to 10, held as follows:-

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8. After noting about following the rule of strict liability in India in many earlier decisions the Hon'ble Supreme Court applied the said rule of strict liability and dismissed the appeal. The Board made an attempt to rely on the exception to the said rule of strict liability being "an act of stranger", the Hon'ble Supreme Court held that the said exception was not available to the Board. The Hon'ble Supreme Court referred to the decision of Privy Council in Quebec Rly. Light, Heat, Power Co. Ltd. v. Vandry 1920 SC 662 wherein the Privy Council held that the Co. supplying electricity is liable for the damages without proof that they had been negligent. Even the defence that the cables were disrupted on account of violent wind and high tension current found its way through the low tension cable into the premises of the respondent was held to be not a justifiable defence. In the opinion of the Hon'ble Supreme Court, merely because the illegal act could be attributed to a stranger is not enough to absolved the liability of the Board regarding the live wire lying on the road. Though the above said case before the Hon'ble Supreme Court arose out of a civil suit, the law laid down therein regarding strict liability of the State Electricity Board in case of live wire getting snapped and falling on the public road is relevant in a writ proceeding also. I do not find any appreciable reason as to why the said law should not be applicable in the writ proceeding.

9. In my considered opinion, the possibility of falling of high tension electric line from its pole as a result of storm or lightning should have been reasonably anticipated by the respondents and as such appropriate steps should have been taken by them so that no harm was caused when someone touched the fallen electric line. The risk involved in the management of supply of electricity was very great and a high degree care was expected of the respondents Inasmuch as they ought to have appreciated the possibility of falling of the electric line from its pole as a result of storm or lightning. Apart from the said consideration, since the management of supply of electricity is a hazardous or inherently dangerous activity, when harm is caused to any one on account of any cause in the operation of the activity, the respondent, who are responsible in respect of the said activity, shall be strictly and absolutely liable to compensate to those who are harmed in the course of, operation of the said activity. Such liability is not to be subject to any exception to the principle of strict liability under the rule in Ryland v. Fletcher. Accordingly, the respondents are liable to pay

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compensation in respect of the death of the said two persons resulting from electrocution.

10. It is to be noted that the question of strict liability was never considered in Chairman, Grid Corporation of Orissa Ltd. (supra) and S.D.O. Grid Corporation of Orissa Ltd. (supra).

(xvi) In Mr. E. Joseph Vs. Tamil Nadu Electricity Board, Rep. by its Chairman, Mount Road, Chennai, (W.P. No.4992 of 2001 dated 30.10.2008), the petitioner's father died due to electrocution, when he came in contact with a live wire, which was lying on the road. The request of the petitioner for compensation was refused. Hence the writ petition. The Board denied negligence and contended that death was due to an accident which happened due to heavy rain and wind and not due to the negligence of the Board. Objection was also raised regarding the maintainability of the writ petition. After considering the objections, and decision of this Court in Lilly Stanislaus Vs. The Chairman, Tamil Nadu Electricity Board, Chennai and three others, reported in 2008 WLR 278, at paragraphs 15 and 16, this Court held as follows:-

15. Once it is accepted by the respondent electricity Board that the death was caused as a consequence of the snapped electricity line belonging to the respondent Electricity Board, there would be an obligation cast on the respondent Board to pay atleast a reasonable compensation to the legal heirs of the deceased person. Raising of technical pleas to avoid payment of such compensation is not to be appreciated. Only when there are seriously disputed facts, the party making the claim for compensation may be asked to go before the Civil Courts to seek his remedies. Such a situation does not prevail in the present case, as the basic facts are not in dispute.

16. In such circumstances, in view of the averments made on behalf of the petitioner, as well as on behalf of the respondent Board and in view of the decision cited above, this Court is of the view that the respondent Electricity Board, is liable to compensate the petitioner and the other legal heirs of the deceased person. Since it has been stated that both the sisters of the petitioner had submitted a consent letter to the respondent Board stating that they have no objection for the compensation amount to be paid to the petitioner, the respondent Electricity Board is directed to pay an amount of Rs.75,000/- to the petitioner as compensation, within a period of twelve weeks from the

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date of receipt of a copy of this order. Accordingly, the proceedings of the second respondent is set aside and the respondent Electricity Board is directed to pay the compensation to the petitioner within the specified period.

(xvii) In K. Sundari Vs. State of Tamil Nadu, rep.by its Secretary to Government, Department of Electricity, Chennai, (W.P. No.19668 of 1999, dated 15.04.2009), the case of the petitioner therein was that her husband was working as a civil contractor. While he was returning to home, on the way, he came in contact with a live snapped wire hanging from above fell on the street, and died on the spot, due to electrocution. The further case of the petitioner was that the second respondent department gave a police complaint and that the body of her husband was also subjected to postmortem. Opinion of the Doctor as per the postmortem certificate was that the deceased died due to electrocution. It was submitted that the live wire which fell on the street, wherein the occurrence was said to have taken place was under the care and maintenance of the department. She claimed compensation. No reply was given. Hence the writ petition. Reliance was placed on the Rule 91 of the Indian Electricity Rules, 1956 (hereinafter referred to as the Rules) to the effect that it is the duty of the Electricity Board Officials to protect the every overhead line erected over any part of a street or other public place with a device approved by the Inspector for rendering the electricity line harmless in case it breaks. It was also pointed out that there was absolutely no factual dispute in respect of the manner of occurrence, in which the husband of the petitioner died due to electrocution. This court awarded compensation.

(xviii) In Rani Vs. The State of Tamil Nadu, represented by its Secretary, Department of Electricity, Chennai, and seven others, (W.P(MD)No.7415 of 2007, dated 03.08.2010), the petitioner therein claimed compensation of Rs.5,00,000/- with interest @ 12% per annum for the period between 21.08.2001 to till the date of payment for the accidental death of the 1st petitioner's husband who died due to electrocution. A criminal case was registered. Opposing the relief sought for in the writ petition, respondents 2 to 4 therein, contended that on 21.08.2001, a lorry with a heavy load and abnormal height had dragged the service connection of D.26 Palukal fed from Manoorkonam SS about 600 meters from the spot of accident and due to the abovesaid incident, service was damaged and cut. In view of the

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same, the electric wire fell on the telephone wire at one end and got energised. It was the case of the claimants therein, that the deceased came in contact with a telephone wire which was in air, muchless than a man's height from the ground, got electrocuted and died. Though the Board objected to the relief sought for in the writ petition on the ground that Board is not negligent and hence not liable to pay compensation, after considering Nilabati Behera Vs State of Orissa, reported in AIR 1993 SC 1960, C. Thekkamalai Vs. State of Tamil Nadu, reported in 2006 WLR 13, Lakshmana Naidu Vs. State of Tamil Nadu, reported in 2006 WLR 608, CSDO Grid Corporation of Orissa Ltd., TNEB Vs. Sumathi, reported in 2000 (4) SCC 543 : 2000 Legal Eagle (SC) 851 , this court rejected the objections of the board, as regards the maintainability of the writ petition and awarded compensation by applying multiplier method.

(xix) In Karuppaye Ammal and Mrs. Guruvammal Vs. The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai, and two others, (W.P.(MD).Nos.9555 and 9557 of 2007, dated 29.06.2011), widows filed separate writ petitions for the death of their husbands due to electrocution. One Krishnasamy was the husband of the petitioner in W.P.(MD).No.9555 of 2007 and Velusamy was the husband of the petitioner in W.P.(MD).No.9557 of 2007. Krishnasamy owned lands in S. Nos.152/1B and 1A and grown lemon trees and cotton. To irrigate those lands using motor pumps, he went to the agricultural field along with his neighbour Velusamy. While they were proceeding towards the aforesaid lands, Krishnasamy came in contact with a live wire in S. No.152/3. The land in S. No.152/3 belonged to one Pandia Naicker, whose land was very near to Krishnasamy's land. He died due to electrocution, as he came in contact with the snapped live wire. When, Velusamy attempted to rescue Krishnasamy, he was also got electrocuted. Both of them died. First Information Report on 01.06.1998 was lodged on the file of Vasudevanallur Police Station and that the same was registered in Cr.No.233 of 1998 under Section 174 Cr.P.C. Each of the petitioners was paid a sum of Rs.25,000/- towards ex gratia by the TNEB. Thereafter, representations were made for compensation. They filed writ petitions. Preliminary objection was raised regarding maintainability. Limitation was also a ground for opposing the prayer for compensation. It was also pleaded that there was no negligence on the part of the electricity board and therefore, the petitioners therein were not entitled to claim compensation for

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the death of their husbands. On the aspect of maintainability, at paragraph 7, this Court held as follows:-

"7.....There is no limitation as such provided for invoking Article 226 of the Constitution of India and the parties should be vigilant to approach the Court claiming relief under Article 226 of the Constitution of India. But, the Court cannot shut eyes and reject the applications at the threshold without taking notice of the facts of each case. When the records of the respondents itself disclose that the snapping of live wire was due to the ageing of conductors, the claim for compensation could not be rejected without examining the same on merits. Furthermore, the respondent being State, under Article 12 of the Constitution of India, is duty bound to answer the claim on merits and they could not take the technical plea more particularly in these type of cases. It is not the case where the respondent board is fighting against the persons who have indulged in theft of electrical energy. On the other hand, victims are the persons who came in contact with the live wire and lost their precious life..... On the basis of the evidence on record and arriving at a categorical finding that the death had occurred due to the negligence of the Board, this Court computed the compensation.

31. Act of God, is the defence taken in this case. On that aspect, it is worthwhile to consider few decisions:

(i) In General Traders Ltd. and Anr. vs. Pierce Leslie (India) Ltd. and others reported in AIR 1987 Ker 62, Hon'ble Mr. Justice K.T. Thomas, has dealt with the plea of "Act of God", as follows:

11. In the text book on Tort by Winfield and Jolowics page 444 (12th Edn. By W. V. H. Rogers) the doctrine of "act of God" is discussed. That defence applies "in circumstances which no human foresight can provide against and of which human prudence is not bound to recognise the possibility". This defence was first recognised by Blackburn, J. in the celebrated case, Fletcher v. Rylands, (1866) LR 1 Exch 265-280. The House of Lords in Greenock Corpn. v. Calidonian Railway, 1917 AC 556 considered the scope and ambit of damnum fatale (act of God) in a case where a concrete paddling pond was constructed by the Corporation in the bed of a stream, altering the course of the stream, and owing to a "rainfall of extraordinary violence", the stream overflowed at the pond and consequently water

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poured into the town damaging the properties of two railway companies. Their Lordships held that:

"The dam must be made perfect against all extraordinary falls of rain -- else the protection is not afforded against the operation which the party must accomplish. An extraordinary fail of rain is a matter which, in our climate, cannot be called a damnum fatale-"

(ii) In A. Krishna Patra vs Orissa State Electricity Board reported in 1998 ACJ 155, High Court of Orissa dealt with Law of Torts, and quoted the following from the 22nd Edition, by Justice G. P. Singh, which reads thus:

"All causes of inevitable accidents may be divided into two classes: (1) those which are occasioned by the elementary forces of nature unconnected with the agency of man or other cause; and (2) those which have their origin either in the whole or in part in the agency of man, whether in acts of commission or omission, non-feasance or mis-feasance, or in any other causes independent of the agency of natural forces. The terms 'act of God' is applicable to the former class."

"An inevitable accident is an event which happens not only without the concurrence of the will of the man, but in spite of all efforts on his part to prevent it. It means, an accident physically unavoidable something which cannot be prevented by human skill or foresight. "

On the facts and circumstances of the case, at paragraph No.10, the Orissa High court, held that, "An 'act of God' is an inevitable or unavoidable accident without the intervention of the man; some casualty which the human foresight could not discern and from the consequence of which no human protection could be provided. This is not a case where the incident was due to unexpected operation of natural forces free from human intervention which no reasonable human foresight could be presumed to anticipate its occurrence or to prevent it."

(iii) In Rushi Pursti vs Orissa State Electricity Board reported in 1999 ACJ 440, High Court of Orissa has observed that

"It is explained in a very illustrative passage in Clerk & Lindsell on Torts, 16th Edn., pp. 568-569, which reads as follows:

Doctrine of res ipsa loquitur. The onus of proof, which lies on a party alleging negligence is, as pointed out, that he should establish his case by a preponderance of probabilities. This he will normally have to do

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by proving that the other party acted carelessly. Such evidence is not always forthcoming. It is possible, however, in certain cases for him to rely on the mere fact that something had happened as affording prima facie evidence of want of due care on the other's part: 'res ipsa loquitur is a principle which helps him to do so'. In effect, therefore, reliance on it is a confession by the plaintiff that he has so affirmative evidence of negligence. The classic statement of the circumstances in which he is able to do so is by Erle, CJI.

There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

10. The expression of 'act of God' signifies the operation of natural forces free from human intervention, such as lightning. It may be thought to include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones and tidal bores and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse, unless it is so unexpected that no reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing at. For instance, where by experience of a number of years, the railway administration knows that in a particular area during a particular season there have been heavy down-pours of rain and consequently extraordinary floods causing damage to their track, they cannot take the plea, that they were due to act of God because it is within their competence to take such steps as would prevent damage. Lord Westbury defined 'act of God' (damnum fatale in Scotch Law) as an occurrence which no human foresight can provide against and of which human prudence is not bound to recognise the possibility. This appears to be the nearest approach to the true meaning of 'act of God'. Lord Westbury's definition was approved by Lord Demdin and Lord Shaw in the House of Lords in Brenock Corporation v. Caledonian Ry. Similarly, Lord Blandaburgh spoke of it as "an irresistible and unsearchable providence nullifying all human effort." That principle has no application to the case at hand.

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(iv) In Taj Singh @ Tejpal Singh vs M.P. State Road Transport reported in 2000 ACJ 214, High Court of Madhya Pradesh explained Act of God, as follows:

".....the person defending the claim has to show that his conduct was utterly without fault i.e. without negligence. In the legal sense the act of God (vis major) may be defined as an extraordinary occurrence or circumstance which could not have been foreseen and could not have been guarded against, or more accurately as an accident due to natural causes, directly and exclusively without human intervention. It is a direct violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. Some of the well-known circumstances of acts of God are: a violent storm at sea, an extraordinarily high tide, an unprecedented rainfall, an extraordinary flood, an earthquake, fire caused by lightning, an extraordinary frost, an extraordinary snowfall and like. They are in a sense inevitable accidents beyond the control of man. Vis major, must be the proximate cause, the causa causans and not merely a causa sina qua non of the damage complained of. The mere fact that vis major coexisted with or followed on the negligence is no adequate defence. Before an act of God may be admitted as an excuse, the party taking the plea must have done all that he is bound to do. See - Halsbury's Laws of England Vol. 9, Fourth Edition, page 323, para 458 and Ratanlal & Dhirajlal's 'The Law of Torts', 23rd Edition by Justice G. P. Singh, page 443, 444.

5. Accidents may happen by reason of the play of natural forces or by intervention of human agency or by both. It may be that in either of these cases accidents may be inevitable. But it is only those acts which can be traced to natural forces and which have nothing to do with the intervention of human agency that could be said to be acts of God. If the act in its origin either in the whole or in part is due to in the agency of man, whether in acts of commission or omission, of nonfeasance or of misfeasance, or in any other cause independent of the agency of natural forces, it will not be a case of act of God."

In the reported case, mechanical defect was pleaded as 'Act of God, and dealing with the same, the court observed thus

"6. The law is well settled that every mechanical defect or failure which cause or results in an accident cannot be attributed to an 'act of

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God' or be termed as 'inevitable accident'. In order to succeed in a defence that the accident was due to a mechanical defect, the owners have to prove that they had taken all necessary precautions and kept the vehicle in a road-worthy condition and that the defect occurred in spite of the reasonable care and caution taken by the owner of the vehicle. In order to sustain a plea that the accident was due to the mechanical defect the owners must raise a plea that the defect was latent and not discoverable by the use of reasonable care. If it is established that in spite of reasonable care, the defect remained hidden the owner would not be liable. See - Minu B. Mehta v. Balkrishna Ramchandra Nayan, AIR 1977 SC 1248."

(v) In Seema Ganesh Uikey v. State of Maharashtra and Ors. reported in 2007 ACJ 1090, the Bombay High Court held as follows:

"It is submitted that merely by contending that there was no complaint in respect of the tree under which the petitioner's husband got crushed and suffered the fatal accident and died cannot entitle them to raise a plea of vis Major (act of God) and, therefore, in absence of any defence, there can be no hesitation on the part of the respondents to arrive at a conclusion that the falling of the tree was due to the negligence on the part of the respondents in discharging their duty of care and, therefore, they are under strict liability to compensate the petitioner and the family of the deceased as heal in the case of Smt. Vandana Chitnavis.

11. Another submission made by Mr. Manohar is that this Court in the earlier petition has considered the principle of "strict liability" in reference to the negligence on the part of authorities regarding their duty of care and has held them liable to pay compensation which was challenged by preferring a S.L.P. in the Supreme Court which came to be dismissed and there would be no justification in denying compensation to the petitioner whose husband died in similar circumstances which is not disputed.

(vi) In Om Prakash vs Govt. of Nct of Delhi & Ors decided on 04.12.2013 in W.P.(C) 313/2012, Delhi High Court, observed that:

"Where the thing is to shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper case, it affords reasonable evidence, in the absence of

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explanation by the defendants, that the accident arose from want of care."

(vii) The Hon'ble Supreme Court in Municipal Corporation of Delhi v. Smt. Sushila Devi & Ors. reported in AIR 1999 SC 1929, reiterated as follows:

"The law is stated in Winfield and Jolowicz on Tort (13th, 1989 ed., p.415) in these words:

"If damage is done owing to the collapse of the projection on the highway or by some other mischief traceable to it, the occupier of the premises on which it stood is liable if he knew of the defect or ought, on investigation, to have known of it. At any rate this is the rule with respect to a thing that is naturally on the premises e.g. a tree."

In Clerk and Lindsell on Torts (16th, 1989 ed., at pages 546-547 para 10.122) the law on trees is summarised as follows:

"The fall of trees, branches and other forms of natural growth is governed by the rules of negligence. When trees on land adjoining a public highway fall upon it, the owner is liable if he knew or ought to have known that the falling tree was dangerous. He is not bound to call in an expert to examine the trees, but he is bound to keep a look out and to take notice of such signs as would indicate to a prudent landowner that there was a danger of a tree falling.....the land-owner was held liable when the tree which fell had been dying for some years before and had become a danger which should have been apparent to an ordinary landowner." In Charlesworth & Percy on Negligence (8th, 1990 ed., at page 668) the law is stated in these terms:

".....when a tree, which had been dying for some years and should have been known to be dangerous by an ordinary landowner, fell and caused damage, the owner was held liable. (Brown V. Harrison (1947) **W.N.191).**

In Hale vs. Hants 1947 (2) All England Reports 628, which is a case of branches of a tree having struck the windows of an omnibus and a piece of glass having struck the plaintiff in the eye, it was held that in the absence of any reason to suspect danger from an overhanging tree or some similar obstruction a driver who is driving close to the kerb when his vehicle is struck by the branch of the tree is not making an unreasonable use of the highway. It was further held that the county

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council should have known that trees grow and throw out their branches and therefore it was their obligation to see that the tree in its natural growth was curbed in such a way as not to hinder the reasonable use of the highway. By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see Brown Vs. Harrison (1947) 63 Law Times Reports 484; Quinn Vs. Scott (1965) 1 W.L.R. 1004, Mackie Vs. Dumbartonshire County Council, (1927) W.N.

247. The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In Municipal Corporation of Delhi Vs. Subhagwanti and Ors. AIR 1966 SC 1750 a clock tower which was 80 years old collapsed in Chandni Chowk Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "The owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect," - said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable.

32. The appellant herein has contended that there was no negligence on their part, which warrants us to consider, few cases on what negligence means.

37. Summarising from the judgments, extracted supra and texts, 'Act of God' means, an unexpected occurrence of nature, such as severe

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gale, snowstorms, hurricanes, cyclones and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. 'Act of God' provides no excuse, unless so it is unexpected that no reasonable human foresight would be presumed to anticipate the occurrence having regard to the conditions of time and place known to be prevailing at. An 'Act of God' is an occurrence, which no human foresight can provide against and of which human prudence is bound to recognise the possibility. 'Act of God' is an inevitable accident, which happens not only without the concurrence of the will of the man, but in spite of all efforts, on his part to prevent it. It means, an accident physically unavoidable something which cannot be prevented by human skill or foresight. An 'Act of God' is an inevitable or unavoidable accident without the intervention of man; some casualty which the human foresight could not discern and from the consequence of which no human protection could be provided. It should be an incident, due to an unexpected operation of natural forces free from human intervention, which no reasonable human foresight could be presumed to anticipate its occurrence or to prevent it. It should be a direct violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. If the act in its origin either in the whole or in part is due to the agency of man, whether in acts of commission or omission, of nonfeasance or of misfeasance, or in any other cause independent of the agency of natural forces, it will not be a case for 'Act of God'.

38. In the light of the above discussion, when the officials of the appellant Corporation have failed to discharge their duties enjoined on them, by Chennai City Municipal Corporation Act, 1919, in Section 259 of the Act, which mandates the Corporation to cut and remove dangerous trees, even if they were standing in a private place and when one of them fell on a car, resulting in loss of the precious life, prima facie, it is a tort, for which, an action for damages would lie. Act of God is not a defence to breach of duty or failure to perform statutory duties. As rightly observed by writ court, had the officials of the appellant Corporation, cut and removed the old, worn out and dangerous trees and performed their statutory duties, the accident would not have occurred.

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> **39.**When there is a failure on the part of the Corporation to discharge its statutory duties, it is not open to them to contend that the second respondent, who lost his parents at the young age, on account of such failure, to move the civil court, when courts have already held that the victim is entitled to public law remedy.
>
> **43.** In the light of the above discussion and decisions, this court is of the view that when there is prima facie negligence, on account of failure to discharge statutory duties, resulting in tort, mandamus can be issued to compel the competent authorities, to pay compensation to the victims.

11.5. By relying on **K. Karthik**, the submission is that the Division Bench of the Hon'ble Madras High Court has considered in detail all the aspects of liability of a Municipal Authority. In that case also, the claimant was travelling in a car when a big tree standing on the left side of the road fell on the car, crushed the car and caused the deaths of the parents of the claimant and in that background, the learned Single Judge had allowed the writ petition and directed payment of a sum of Rs.22,00,000/- as compensation and Rs.7,26,000/- as interest applying the principles applicable to a motor vehicle accident. The said order of the Writ Court having challenged before the Division Bench, the Division Bench, after considering a catena of judgments in relation to similar kind of situations, upheld the order of the learned Single Judge, rejected the contention of the Corporation that there was an act of God and held that with a mandate for the Corporation under Section 259 of the Chennai City Municipal Corporation Act, 1919 to cut and remove dangerous trees, even if they were standing on private land, the said statutory duty not having been discharged, resulting in the death of the parents of the claimant, the Hon'ble Division Bench held the Corporation to be prima facie negligent; dismissed the Writ Appeal upholding the order passed by learned Single Judge.

11.6. For purpose of completeness and easy reference, Section 259 of the Chennai City Municipal Corporation Act, 1919 is reproduced hereunder for easy reference:

> **259. Precautions in case of dangerous trees.—**(1) If any tree or any branch of a tree or the fruit of any tree be deemed by the commissioner to be likely to fall and thereby to 1[endanger any person or any structure], the commissioner may, by notice, require the owner of the said tree to secure, lop or cut down the said tree so as to prevent any danger therefrom.
>
> (2) If immediate action is necessary, the commissioner may himself, before giving such notice or before the period of notice expires secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or take such temporary measures, as he thinks fit to

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prevent danger, and the cost of so doing shall be recoverable from the owner of the tree in the manner provided in section 387.

11.7. The Analogous provisions in Karnataka dealing with precautions in respect of dangerous trees are substantially similar. The relevant provisions are set out below for ready reference. Section 323 of the Karnataka Municipal Corporations Act, 1976, is reproduced hereunder for easy reference:

> **323.Precautions in case of dangerous trees.**- (1) If any tree or any branch of a tree or the fruit of any tree be deemed by the Commissioner to be likely to fall and thereby to endanger any person or any structure, the Commissioner may by notice require the owner of the said tree to secure, lop or cut down the said tree or remove the fruit so as to prevent any danger therefrom.
>
> (2) If immediate action is necessary, the Commissioner may himself before giving such notice or before the period of notice expires secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or to take such temporary measure, as he thinks fit to prevent danger, and the cost of so doing shall be recoverable from the owner of the tree in the manner provided in section 470.

11.8. A substantially similar provision is contained in Section 257 of the Bruhat Bengaluru Mahanagara Palike Act, 2020, which is reproduced hereunder for easy reference:

> **257. Precautions in case of dangerous trees.—**
>
> (1) If any tree or any branch of a tree or the fruit of any tree be deemed by the Chief Commissioner to be likely to fall and thereby to endanger any person or any structure, the Chief Commissioner may by notice require the owner of the said tree to secure, lop or cut down the said tree or remove the fruit so as to prevent any danger therefrom.
>
> (2) If immediate action is necessary, the Chief Commissioner may himself before giving such notice or before the period of notice expires secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or take such temporary measure, as he thinks fit to prevent danger, and the cost of so doing shall berecoverable from the owner of the tree as arrears of land revenue.

11.9. The same legislative approach has been retained in Section 287 of the Greater Bengaluru Governance Act, 2024, which is reproduced hereunder for easy reference:

> **287. Precautions in case of dangerous trees.—**

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> (1) If any tree or any branch of a tree or the fruit of any tree be deemed by the Commissioner to be likely to fall and thereby to endanger any person or any structure, the Commissioner may by notice require the khatadar of the said tree to secure, lop or cut down the said tree or remove the fruit so as to prevent any danger therefrom.
>
> (2) If immediate action is necessary, the Commissioner may himself before giving such notice or before the period of notice expires secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or take such temporary measure, as he thinks fit to prevent danger, and the cost of so doing shall be recoverable from the khatadar of the tree as arrears of land revenue.

11.10. He relies on the decision of the Hon'ble Supreme Court in the case of **Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd., vs. M.P. Road Development Corporation and** another,[2] more particularly Para 8.4 thereof, which is reproduced hereunder for reference:

> **8.4.** Respondent No. 1 was incorporated on 14.07.2004 to develop, build, maintain, and operate the State Highways, District or other local body roads, expressways, and government buildings in Madhya Pradesh. Respondent No. 1 also, on contract, develops and maintains National Highways in or passing through Madhya Pradesh. The Madhya Pradesh Highways Act, 2004, repealing the 1936 Act, also reiterates the State's role in the development, construction, and maintenance of roads in the State. Since the right to access any part of the country, with certain exceptions and restrictions under certain circumstances, is a fundamental right guaranteed under Article 19(1)(g) of the Constitution, and the right to safe, well-maintained, and motorable roads is recognised as a part of the right to life under Article 21 of the Constitution of India, it is the responsibility of the State to develop and maintain the roads directly under its control. The contract for laying of a State Highway/District Road, when assigned by the Corporation owned and run by the government, assumes the character of a public function – even if performed by a private party – and would satisfy the functionality test to sustain the writ petition. Accordingly, in view of the statutory framework and the nature of relief sought, the writ petition involves a public law element and was thus maintainable before the High Court. The decisions relied upon by the appellant are factually distinguishable and pertain to materially different

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contexts. As such, they do not advance the appellant's case and have no application to the facts and legal issues involved in the present case.

11.11. By relying on **Umri Pooph Pratappur**, his submission is that the right to access any part of the country with certain exceptions and restrictions is a fundamental right guaranteed under Article 19(1)(g) of the Constitution and as such, every citizen is entitled to a right to safe, well maintained and motorable roads as a part of right to life under Article 21 of the Constitution. It is the duty of the State to develop and maintain the roads directly under its control. There is a public law element in such maintenance, and if there is any violation thereof, the violator would be liable.

11.12. He relies upon the decision of the Division Bench of this Court in the case of **Union of India rep by its Secretary, Ministry of Defence and others vs. Government of Karnataka rep by its Chief Secretary and others 2024 SCC Online Kar 1991** more particularly Paras 5.3, 5.4, 5.4.1., which are reproduced hereunder for easy reference:

> **5.3** In the context of the above provision of Section 22 of the NGT Act and in view of the contention, the question falls for consideration is whether it would be permissible for the High Court to exercise powers under Article 226 of the Constitution. The position of law is well settled that only reason that an alternative remedy is available, would not be an embargo on the High Court's power to entertain the petition under Article 226 in certain contingencies.
>
> **5.4** Surveying the decisions generally laying down the above law, in Harbanslal Sahnia (supra), the Apex Court relying on its own decision in Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1 : 1998 Legal Eagle (SC) 1012] observed that Rule of exclusion of writ jurisdiction because of availability of an alternative remedy is a rule of discretion and not of a compulsion. It was stated that certain contingencies such as where the petitioner seek to enforce the fundamental rights, where there is failure to comply with the principles of natural justice or where the orders of proceedings are without jurisdiction or that the vires of the Act is challenged, the availability of the alternative remedy is not to be pleaded as a bar.
>
> **5.4.1** The Supreme Court in U.P. Power Transmission Corporation Ltd. v. CG Power and Industrial Solutions Ltd. [(2021) 6 SCC 15], stated to reiterate that existence of an alternative remedy will not be always a prohibitory norm for the High Court to refuse to entertain the writ petition, "It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition,

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notwithstanding the availability of an alternative remedy, particularly: (1) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1 : 1998 Legal Eagle (SC) 1012] and Pimpri Chinchwad Municipal Corpn. v. GayatriConstruction Co. [(2008) 8 SCC 172 : 2008 Legal Eagle (SC) 1065], cited on behalf of Respondent 1."

11.13. By relying on **Union of India rep by its Secretary, Ministry of Defence and others vs. Government of Karnataka rep by its Chief Secretary and** others, his submission is that an alternative remedy, even if available, would not be an embargo on the High Court to exercise power to entertain a petition under Article 226 in certain contingencies. The availability of an alternate remedy is a rule of discretion and not a rule of compulsion. It is for this Court, in the circumstances, to decide whether to exercise jurisdiction or not. In the peculiar facts and circumstances, he submits that there is no need to drive the petitioner to a Civil Court for damages as sought for. All the essential elements being available, there being no disputed questions of fact, this Court can exercise powers in writ jurisdiction and grant compensation as applicable under the Motor Vehicles Act, 1988.

11.14. His submission is that the petitioner, being born on 11.07.1985, as on the date of the incident, was aged about 39 years; hence, the multiplier applicable would be '15'. He relies on the disability certificate issued by the Bowring and Lady Curzon Hospital, Shivajinagar, Bangalore dated 03.04.2025 to contend that the doctor has categorically opined that there is 85% disability. The petitioner was drawing a salary of Rs.41,212/- as on the date of the incident; the same is required to be considered. The salary certificate issued by the employer has been produced.

11.15. Though the physical disability is 85%, his submission is that the petitioner can no longer travel and perform the works that he could have so performed, since he is now a paraplegic, unable to move his both the upper limbs and the lower limbs, the disability is required to be considered at 100%.

11.16. His submission is also that the total medical expenses incurred by the petitioner is a sum of Rs.26,82,077.75 as regard which bills have been produced and as such the entire medical expenses have to be made available by deducting the payments made by the insurance company amounting to Rs.2,37,806/-. Future prospects would have to be taken at 40% since the petitioner was aged about 39 years as on the date of the incident. As per his calculation, the amount liable to be paid is Rs.1,03,85,424/-

[41,212 + 40% = 57,696.80]

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[57,696.80 x 12 = 6,92,361.60]

[6,92,361.60 x 15 = 1,03,85,424]

11.17. His further submission is that the petitioner, being required to be cared for on a regular basis, and his wife also being a physically disabled person, would have to hire an attendant, for which he claims the petitioner would incur a sum of Rs.16,500/- per month. Taking into account a minimum of 15 years for such treatment, he submits that an amount equivalent to Rs.16,500x12x15=29,70,000/- is liable to be paid.

11.18. His further submission is that the petitioner ought to be paid an amount of Rs.5,00,000/- on account of pain and suffering, Rs.5,00,000/- towards loss of amenities, Rs.3,00,000/- towards food and nourishment and reimbursement of the medical bill after deduction of the insurance amount, totalling to Rs.24,44,271/-. The medical expenses incurred by the petitioner for the last six months being Rs.65,000/- per month, future medical expenses are also required to be paid amounting to Rs.1,17,00,000/- [65,000 x 12 x 15].

11.19. He has also sought compensation towards the educational expenses to be incurred for his daughter amounting to Rs. 50,00,000/-. In all he submits that the total amount required to be paid is as follows:

Head of Account	Amount in Rs.
Future prospects	1,03,85,424
Attendant charges	29,70,000
Pain & suffering	5,00,000
Loss of amenities	5,00,000
Food & nourishment	3,00,000
Reimbursement of medical Expenses (after deducting insurance coverage)	24,44,271
Future medical expenses	1,17,00,000
Educational expenses	50,00,000
Total expenses	**3,37,99,695**

11.20. Apart from the above, he submits that interest at the rate of 6% would have to be paid from the date of the incident till the date of payment by the respondents. On the above grounds, he submits that the above petition is required to be allowed and the amounts as calculated above is required to be made by the respondents.

12. Sri. Lakshmish G., learned counsel for respondent No.4 submits that:

12.1. There is no liability that can be imposed on the school inasmuch as though the tree is situated in the premises of the school, there is an embargo on the school from cutting or felling the trees without prior permission. The school had, on 16.02.2024, sought permission from the BBMP to prune the tree branch. While the said application

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was pending, the incident occurred on 07.03.2024. The school, having written to the BBMP nearly 20 days before the incident, has acted proactively and has taken all action that was required to be taken. It is only on account of the BBMP not providing permission to prune the tree that it could not be so pruned. The liability cannot be imposed on the school.

12.2. His submission is that the school would comply with its promise made to the petitioner while in hospital. The school would provide free education to the daughter of the petitioner until she passes 12th Standard, till where the school provides education. This he submits without prejudice to the contention that the school is not liable or responsible for any loss or injury caused to the petitioner. As a bona fide, he submits that the school has already paid a sum of Rs. 3,00,000/- to the petitioner when he was in hospital.

12.3. His submission is that the school was not negligent in maintaining the tree, nor was it responsible, nor did it fail to take action regarding the same. The school has discharged its duty by notifying the competent authority on 16.02.2024 about the danger posed by the tree. Despite the warning issued to the BBMP, it is on account of the inaction or failure to take action by the BBMP that the incident occurred. On that ground, he submits that there is no negligence on the part of the school.

12.4. Insofar as the claims which have been made by the petitioner, his submission is that the same is highly inflated. The bills, if any, which are required to be considered would have to stand the test of cross-examination. A trial needs to be conducted. He disputes the bills which have been raised by the petitioner and submits that insofar as insurance is concerned, the petitioner has suppressed the same when the petition was filed initially. It is only thereafter that it was pointed out that the petitioner has adjusted the insurance amount. The suppression of the insurance policy and the claim received from the insurance company would disentitle the petitioner from any relief.

12.5. As regards the salary statement produced by the petitioner, his submission is that some of the payments made by the employer are post the incident and those cannot be taken into consideration. His further submission is that the employer of the petitioner, having made salary payments for nearly eight months after the incident, undermines the petitioner's claim that the petitioner has no income. The employer having paid the money, the petitioner having received the money, has continued to receive the same income as he was receiving earlier and, on that ground, he submits that there is no loss which has been caused to the petitioner. His submission also is that merely because a person suffers from paraplegia, he cannot be said to be completely disabled.

12.6. The petitioner is cognizant. His cognitive functions are still available for the petitioner to avail of any other employment. The claim which has been made now

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would amount to unjust enrichment on the part of the petitioner, and the proceedings which are pending are harassment to the school, which is in no manner responsible for the said incident.

12.7. He relies on the decision of this Court in the case of **Dr V L Nandish v The Commissioner & Joint Commissioner and Ors**[3] and submits that the BBMP, having placed a Standard Operating Procedure as well as the guidelines and parameters adopted by the Tree Officer and Deputy Conservator for cutting dangerous trees, has not followed the said SOP. Thus, it is the BBMP who is responsible for the incident and not the school.

12.8. He relies on the guidelines issued by the BBMP in the matter of Payment of Compensation to the road and footpath users, if were to suffer injury or loss of life or damage in an accident due to potholes / poor condition of the roads and footpaths and submits that in terms of said guidelines, the maximum amount payable is a sum of Rs.3,00,000/- on account of death, Rs.15,000/- on account of injuries and on that ground he submits that it is the guidelines which would be applied today. He nevertheless submits that even the compensation under the said guidelines would be liable to be paid by the BBMP and not by the respondent No.4.

12.9. On the above grounds, he submits that the writ petition as against the school has to be dismissed.

13. Sri B. S. Karthikeyan, learned counsel appearing for the BBMP now GBA, would submit that:

13.1. The above petition for claim of compensation is not maintainable before this Court. This Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, cannot substitute itself for a Civil Court to assess the damages when the liability is contested, and evidence is required to determine both the negligence as also to quantify the compensation.

13.2. His submission is that admittedly the Gulmohar tree was situated inside the compound of Good Shepherd Convent and was projecting over the road from the premises of the said private institution. The responsibility for maintenance, safety and integrity of the tree rests on the owner or occupier of the land on which the tree stands. The owner of the land is therefore the owner of the tree and any damage caused by the falling of the tree is liable to be paid by the school. His submission is that the owner of the land has a continuing duty of care to ensure that the tree does not pose a danger to persons within the premises, to the neighbouring property or to the general public.

13.3. His submission in this regard is that the Corporation is only in charge of maintaining the land and/or property vested with the Corporation. The Corporation

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cannot go into the land of private parties to ascertain the status of the trees and of the buildings so as to ascertain the danger posed by them. His categorical submission is that it is the responsibility of the tree owner to conduct regular reasonable visual inspections, identify any visible signs of decay, disease, cracks, splits, uprooting or loose branches, and undertake timely pruning, trimming or removal of dangerous branches.

13.4. He admits that the school had addressed a letter dated 16.02.2024 to the BBMP stating that a thick branch of the gulmohar tree was projecting over the road and that the branch could break at any time and also that it was dangerous to school children, residents and vehicles. He submits that though the letter is dated 16.02.2024 it was submitted to the BBMP on 22.02.2024 i.e., after 6 days of the letter being written. He submits that is the letter had been submitted earlier the BBMP could have acted on it earlier, at any rate before ethe incident. By relying on the very same letter, his submission is that the school authorities were very much aware of the potential danger of the branches of the said tree and it was therefore required of the school to cordon off the area and ensure urgent removal, more so when there are children studying in the said school. The duty and obligation on the part of the school has not been discharged. Even though the school authorities acknowledged that there was a potential grave danger posed by the said tree.

13.5. The letter seeking permission having been received on 22.02.2024, the said letter was processed by the BBMP, and permission to prune the dead and dangerous branch was issued on the very date of the incident, i.e. 07.03.2024. The fact that the incident occurred on the very same day cannot make the BBMP liable. The BBMP has acted in right earnest. The 13 days time taken in processing the said request by the BBMP cannot be said to be unreasonable. There is no inaction, delay or negligence attributable to the BBMP. His submission is that the said tree or its branches did not become dangerous overnight. The school was aware of the same from a period and point of time prior to 16.02.2024. The school ought to have taken proactive action much before that date. The fact that a regulatory permission was required does not shift the duty of maintenance from the private land owner to the BBMP, and on that ground, he submits that regulatory oversight for cutting of trees and/or branches cannot be equated with ownership or control of the tree.

13.6. His submission is that no promise was made by the BBMP to provide any job or make payment of any compensation. An ex gratia payment of Rs.5,00,000 was paid to the petitioner as financial assistance due to the unfortunate incident to enable the petitioner to tide over the immediate requirements. Such payment of Rs.5,00,000 does not in any manner amount to admission of fault on the part of the BBMP.

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13.7. Without prejudice to the above, he submits that the falling of a branch is a sudden and unforeseeable event qualifying as an Act of God and coming within the doctrine of vismajor/force majeure which is beyond the control of the BBMP. BBMP can be made liable only if there is wilful negligence or conscious disregard. There is no such allegation which could be made against the BBMP.

13.8. Insofar as the liability of the BBMP is concerned, the same is required to be decided in CC No.61833/2024. Without that being decided, the question of holding the BBMP liable to make payment of compensation in the present writ petition is not permissible.

13.9. He also reiterates that there are many disputed facts which would require determination on a trial being conducted. The witnesses need to be subjected to examination and crossexamination. The aspect of negligence and contributory negligence between BBMP and the school is required to be determined so also apportionment of liability between the school and the BBMP be determined. There being various claims made by the petitioner for present and future pecuniary and nonpecuniary damages, the assessment can be so made only in a properly instituted suit.

13.10. He also relies on the guidelines issued in the matter of Payment of Compensation to the Road and Footpath users, if were to suffer injury or loss of life or damage in an accident due to potholes / poor condition of the Roads and Footpaths and submits that the maximum compensation payable is a sum of Rs.3,00,000/-. Ex gratia payment of Rs.5,00,000 having already been made, no further payment is required to be made by the BBMP.

13.11. He relies on the decision of the Hon'ble Supreme Court in the cases of **Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy** **(2011) 14 SCC 481 : 2011 Legal Eagle (SC) 892** , more particularly Paras 3, 5, 18, 54 and 55 which are reproduced hereunder for easy reference:

> 3. The burning of (i) the transformer oil, (ii) the diesel and petrol from the parked vehicles, (iii) the upholstery material, paint and other chemicals of the vehicles, and (iv) foam and other articles stored in the said parking area generated a huge quantity of fumes and smoke which consisted of carbon monoxide and several poisonous gases. As the ground floor parking was covered all round by walls, and the air was blowing in from the entry and exit points, the smoke and noxious fumes/smoke could not find its way out into the open atmosphere and was blown towards the staircase leading to the balcony exit. On account of the chimney effect, the smoke travelled up. Smoke also travelled to the air conditioner ducts and was sucked in and released into the auditorium. The smoke and the noxious fumes stagnated in the upper reaches of the

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auditorium, particularly in the balcony area. By then the electricity went off and the exit signs were also not operating or visible.

5. The first respondent is an association of the victims of Uphaar Tragedy (for short "the Victims Association" or "the Association"). The members of the Association are either those who were injured in the fire or are relatives/legal heirs of those who were killed in the fire. The Association filed a writ petition before the Delhi High Court. They highlighted the shocking state of affairs existing in the cinema building at the time of the incident and the inadequate safety arrangements made by the owners. They described the several violations by the owners of the statutory obligations placed on theatre owners under law for prevention of fire hazards in public places. They highlighted the acts of omission and commission by the public authorities concerned, namely, Delhi Vidyut Board ("the DVB", for short), MCD, Delhi Fire Force and the licensing authority. They alleged that these authorities not only failed in discharge of their statutory obligations, but acted in a manner which was prejudicial to the public interest by failing to observe the standards set under the statute and the rules framed for the purpose of preventing fire hazards; that they issued licences and permits in complete disregard of the mandatory conditions of inspection which were required to ensure that the minimum safeguards were provided in the cinema theatre. They pointed out that most of the cinema theatres were and are being permitted to run without any proper inspection and many a time without the required licences, permissions and clearances. They therefore sought adequate compensation for the victims of the tragedy and punitive damages against the theatre owner, the DVB, MCD, Delhi Fire Force and the licensing authority for showing callous disregard to their statutory obligations and to the fundamental and indefeasible rights guaranteed under Article 21 of the Constitution of India of the theatregoing public, in failing to provide safe premises, free from reasonably foreseeable hazards.

18. We may only refer to the unauthorised closure of an exit from balcony and reduction of width of gangways by addition of seats in greater detail to have a complete picture. Uphaar Cinema was inaugurated on 27-4-1973. In the year 1975, there was a general cut of 10% value of the cinema ticket rates fixed by the Delhi Administration. The licensees made a representation to the Delhi Administration alleging that the expenses had gradually gone up during the course of

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years after the rates were fixed and that even the existing rates were inadequate to meet the operating costs. The representation of the Association of Motion Pictures Exhibitors was considered and the Delhi Administration agreed to relax the Rules and allowed the licensees to have additional seats (in addition to the existing seats) in their cinema halls to make good the loss caused to the licensees by the reduction in the rates by 10%.

54. It is evident from the decisions of this Court as also the decisions of the English and Canadian Courts that it is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. In regard to performance of statutory functions and duties, the courts will not award damages unless there is malice or conscious abuse. The cases where damages have been awarded for direct negligence on the part of the statutory authority or cases involving doctrine of strict liability cannot be relied upon in this case to fasten liability against MCD or the licensing authority. The position of the DVB is different, as direct negligence on its part was established and it was a proximate cause for the injuries to and death of victims. It can be said that insofar as the licensee and the DVB are concerned, there was contributory negligence.

55. The position of licensing authority and MCD is different. They were not the owners of the cinema theatre. The cause of the fire was not attributable to them oranything done by them. Their actions/omissions were not the proximate cause of the deaths and injuries. The licensing authority and MCD were merely discharging their statutory functions (that is granting licence in the case of the licensing authority and submitting an inspection report or issuing an NOC by MCD). In such circumstances, merely on the ground that the licensing authority and MCD could have performed their duties better or more efficiently, they cannot be made liable to pay compensation to the victims of the tragedy. There is no close or direct proximity to the acts of the licensing authority and MCD on the one hand and the fire accident and the death/injuries of the victims. But there was close and direct proximity between the acts of the licensee and the DVB on the one hand and the fire accident resultant deaths/injuries of victims. In view of the well-settled principles in regard to public law liability, in regard to discharge of statutory duties by the public authorities which

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do not involve mala fides or abuse, the High Court committed a serious error in making the licensing authority and MCD liable to pay compensation to the victims jointly and severally with the licensee and the DVB.

13.12. By relying on **Association of Victims of Uphaar Tragedy** he submits that the liability of a public authority must be determined with reference to the nature and extent of its statutory obligations and the circumstances in which the incident occurred. It is contended that the mere occurrence of an accident does not, by itself, establish negligence or constitutional/public law liability on the part of the municipal authority.

13.13. He submits that where the claim for compensation involves disputed questions of fact relating to negligence, causation and the circumstances in which the accident occurred, such issues cannot ordinarily be adjudicated in proceedings under Article 226 on the basis of affidavits alone. He submits that mere occurrence of an accident is insufficient to establish negligence and that disputed factual issues are ordinarily required to be determined in appropriate civil proceedings.

13.14. It is therefore contended that, in the present case, the questions as to the condition of the tree, whether the BBMP had prior notice of any danger, whether there was any failure of statutory duty, and whether the incident was attributable to negligence on the part of the BBMP require factual determination and cannot be presumed merely from the occurrence of the accident.

13.15. He relies on the decision of the Division Bench of this Court in the case of **K.K. Umesh Kumar vs. Smt. Lijji and others**[4] more particularly Paras 2 and 10, which are reproduced hereunder for easy reference:

2. Facts giving rise to the filing of the appeal briefly stated are that on 23.06.2007 while it was raining heavily, the claimant was proceeding to Koramangala in an auto bearing registration No.KA-03/A-9920. At about 12.30 p.m. when the auto was near Queens road and was proceeding towards Chinnaswamy stadium road, where old trees were planted and some of the branches of the trees were hanging on the road. When the auto was stopped under one such tree, the branch detached from the tree and fell on the said auto. As a result of the aforesaid impact, the claimant sustained injuries and was hospitalized.

10. It is not in dispute that the claimant suffered injuries while he was traveling in the auto when there was storm and rain. Even though the claimant requested the driver of the auto to stop the vehicle on the road side till the rain stops, the driver of the auto, without heeding to request of the appellant, drove the auto in bad weather and he stopped the auto under a 100 year old tree, branches of which

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were hanging and he did not take care of the safety of passengers in the auto. It is the duty of the BBMP and the Horticulture Department to look after the maintenance of the trees in the city, that too they should take care of the old trees when it was raining heavily and the branches of the trees were hanging dangerously. Due to their negligence, when the auto was parked under the tree the branches fell on the said auto. Therefore, there is a contributory negligence on the part of the BBMP and the Horticulture Department. Considering the evidence of the parties and the documents produced, we are of the opinion that the accident has occurred due to the contributory negligence of the driver of the auto, BBMP and the Horticulture Department. Accordingly, we hold that the driver of the auto is responsible at 50% and the BBMP at 25% and the Horticulture Department at 25% for the occurrence of the impact and the injuries suffered by the claimant.

13.16. By relying on **K K Umesh Kumar** he submits that the said judgment recognises that, in cases involving injuries caused by falling tree branches, liability may be attributed to the BBMP where negligence in maintaining and safeguarding trees is established. At the same time, the decision also recognises the principle of **contributory negligence**, with liability being apportioned between the persons responsible for the accident and the BBMP/Horticulture Department according to their respective contribution to the occurrence.

13.17. He relies on the decision of the co-ordinate bench of this Court in the case of United India **Insurance Co. Ltd., vs. Susila and** others[5] more particularly Paras 2, 3, 18, 23, 28, 29 and 31, which are reproduced hereunder for easy reference:

2. Factual matrix of the case of the claimants before the Tribunal is that the claimants invoking Section 163-A of Motor Vehicles Act claimed compensation of Rs.5,00,000/- in respect of death of Shamrao Patil in a road traffic accident, who died on 02.07.2006 at 6.00 p.m. when he was proceeding on Hero Honda motorcycle bearing Reg.No.MH- 09/AV-706 and when he came near Somali land on Salpewadi-Gargoti road within the limits of Salpewadi village, at that time a big branch of eucalyptus tree suddenly fell on the head of the deceased, as a result of which he had sustained grievous injuries. Immediately he was shifted to Government hospital, Gargoti for treatment and he succumbed to injuries and they have spent an amount of Rs.25,000/- towards medical treatment and funeral expenses and the deceased was hale and healthy and was aged about 44 years on the date of accident. It is further contended that he was earning Rs.3,300/- by doing mason work and was maintaining his family and due to untimely death, the claimants have put to great mental agony, shock and lost their love and affection and family also put to financial difficulties.

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3.It is further contended that the accident is on account of use of motorcycle which is owned by respondent No.1 and insured with respondent No.2 and hence, claimed compensation.

18. In view of the rival contentions of the parties, the following points would arise for consideration:

i. Whether the claimants are entitled for compensation in a case of fall of big branch of eucalyptus tree on the head of deceased while he was proceeding on a motorcycle?

ii. Whether the deceased stepped into the shoes of the insured as contended by learned counsel for Insurance Company?

iii. Whether the deceased would become third party as contended by learned counsel for claimants?

iv. Whether in a case of this situation, the Insurance Company is liable to pay the compensation?

v. What order?

23. Having considered the principles laid down in the judgements referred supra and also the judgement in the case of Sulochana, wherein it is held that all that need be shown by the claimant in support of the claim is that the injury or death which is made the basis for the claim arose out of the use of a motor vehicle, the provision is not intended to introduce a rule of evidence merely shifting the burden of proof from the claimant to the owner and the driver of the vehicle. If the intention of the parliament behind the introduction of Section 163-A was to simply shift the burden of proof to the owner or the driver of the vehicle, the provisions of Section 163-A would have been differently worded, therefore, this court has no hesitation in holding that victim or legal heirs of a victim are entitled to claim compensation in terms of Section 163-A read with Schedule II to the Act without either pleading or proving that the accident in question had resulted from any act of negligence or default on the part of the owner or the driver of the vehicle. Under such circumstances, the very contention of the Insurance Company cannot be accepted and hence, point No.1 is answered in affirmative.

28. Learned counsel for the claimants also brought to notice of this Court the judgement in the case of Deepal, referred supra and brought to notice of this Court para No.66, wherein it is discussed with regard to the provisions of Motor Vehicles Act and also discussed Section 163-A particularly and held that it is by way of an exception to Section 166 and

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the concept of social justice has been duly taken care of and no doubt in the principles laid down in the judgement it is distinguished between Section 163-A and Section 166 and in case the claim petition is under Section 166, negligence is the criteria for deciding the claim and in case the claim petition is under Section 163-A, it covers where even negligence is on the part of the victim and nowhere it is held that family members of the insured become third party as contended by learned counsel for the claimants.

29. Having perused materials on record, the father (deceased) stepped into the shoes of the insured since he has borrowed the vehicle from the daughter and was driving the motorcycle at the time of accident which has taken place and he succumbed to injuries. Hence, point No.2 is answered in favour of Insurance Company and point No.3 is answered against the claimants and it cannot be held that the deceased would become third party as contended by counsel for claimants.

31. In view of Ramkhiladi's case, if policy covers the risk of the insured, the company is liable to pay the compensation on the head of compulsory PA to owner-cum-driver and in terms of Ex.R.1 for compulsory PA to owner-cum-driver an amount of Rs.50/- is collected and the same is not disputed and the Tribunal failed to take note of the contents of the document at Ex.R.1 and instead of fastened liability on Insurance Company to pay entire compensation. In view of payment of Rs.50/- under the coverage of compulsory PA to owner-cum-driver and also in view of judgement in Ramkhiladi, wherein the Apex Court held that when the additional premium had been paid towards personal accident cover to owner-cum-driver, an amount of Rs.1,00,000/- has to be paid to the heirs of borrower of vehicle, since he stepped into the shoes of the owner of vehicle. The judgement of Ramkhiladi is very clear regarding the said aspect in para Nos.5.8 and 5.9. Hence, claimants are entitled for an amount of Rs.1,00,000/- since there is explicit coverage of the insurance under the head of personal accident cover to insured-cum-driver. Hence, the Insurance Company is liable to pay compensation of Rs.1,00,000/- with interest.

13.18. By relying on **Susila,** he submits that the said decision arose out of an accident caused by the fall of a tree branch on a person travelling on a motorcycle. However, the decision principally concerned the applicability of Sections 163-A and 166 of the Motor Vehicles Act, 1988 and the liability of the insurer. It is therefore contended that the decision has limited relevance to the determination of the BBMP's liability in the present proceedings.

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13.19. He relies on the decision of the Division Bench of this Court in the case of **Sulochana vs. Karnataka State Road Transport Corporation ILR 2003 KAR 4911** more particularly Paras 2, 6 & 11 which are reproduced hereunder for easy reference:

> **2.** The deceased Sri H. Sanjeeva was working as Head Master in the Government High School at Sooda in Dakshina Kannada. On 7.4.1995 he was traveling in a bus owned by the respondent-Corporation from Udupi to Bangalore in connection with certain official business. When the bus reached a place near Gandhi Farm on the Kunigal-Bangalore road at about 6.45 a.m., a Banyan tree growing on the side of the road fell on the running bus resulting in the death of the Sri Sanjeeva and two other passengers travelling in the same. A claim petition for payment of compensation was originally filed by the widow, minor, children and the parents of the deceased under Section 166 of the Motor Vehicles Act before the Tribunal at Bangalore. The said petition was subsequently amended so as to make a claim for compensation on no fault basis in terms of Section 163-A of the Motor Vehicles Act. The claim was opposed by the respondent-Corporation giving rise to the following five issues:
>
> "1. Whether the petitioners prove that H. Sanjeeva died in motor vehicle accident which occurred on 7.8.1995 at 6.45 a.m. on Kunigal Bangalore road while he was travelling in KSRTC bus bearing Regn. No. KA- 01-F-1164?
>
> 2. Whether the petitioners prove that this petition is maintainable in law?
>
> 3. Whether the petitioners prove that they are entitled to compensation? If so, to what amount?
>
> 4. Whether the respondent proves that it is not liable to pay compensation as the accident was not due to rash and negligent driving by its driver?
>
> 5. What order or award?"
>
> **6.**We have given our anxious consideration to the submissions made at the bar. Section 163-A was added to the Motor Vehicles Act by an amendment in the year
>
> > 1994. The purpose underlying the introduction of the said provisions was examined by the Supreme Court in Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala [2001 ACJ 827 : 2001 Legal Eagle (SC) 594 .]. The Court declared that the object underlying the amendment was to determine and pay compensation on the basis of a predetermined formula, which itself is based on the criteria relevant for determining compensation in fault cases. Compensation amount is paid without

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pleading or proof of fault, on the principle of social justice as a social security measure because of the ever increasing motor vehicles accidents in a fast moving society. The Court further held that the law before the introduction of Section 163-A gave a limited benefit to the extent provided under Section 140 for no fault liability and determination of compensation amount on fault liability was taking a long time before the Tribunals. That mischief was sought to be remedied by introducing Section 163-A and the disease of delay sought to be cured to a large extent by affording benefit to the victims on the basis of a structured formula. If that be the purpose underlying the introduction of Section 163- A as indeed it is, we see no reason how proof of fault can still be made a basis for denying relief under the said provision. The claimant is on the plain language employed in Section 163-A(2) not required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the vehicle or any other person. This implies that the right to seek compensation for death or injury would be enforceable under Section 163-A r/w Schedule II to the Act even in the absence of any plea or proof of the accident having resulted from any rash or negligent act on the part of the driver of the vehicle. The argument of Mr. Jaiprakash that while the claimant need not plead or prove negligence of the driver, it is open to the owner or the driver of the vehicle to prove that there was no real negligence leading to the accident does not therefore commend itself to us. The provisions of Section 163-A are substantive in nature they have been held to be so in a full bench decision of this Court in Guruanna Vadi v. General Manager, Karnataka State Road Transport Corporation [2001 ACJ 1528.]. The provision is not intended to introduce a rule of evidence merely shifting the burden of proof from the claimant to the owner or the driver of the vehicle. If the intention of the Parliament behind the introduction of Section 163-A was to simply shift the burden of proof to the owner or the driver of the vehicle, the provisions of Section 163-A would have been differently worded. We have therefore no hesitation in holding that a victim or legal heirs of a victim are entitled to claim compensation in terms of Section 163-A r/w Schedule II to the Act without either pleading or proving that the accident in question had resulted from any act of negligence or default on the part of the owner or the driver of the vehicle. All

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that need be shown by the claimant in support of the claim is that the injury or death which is made the basis for the claim arose out of the use of a motor vehicle.

11. It is evident from the above pronouncements that the expression "arising out of the use of the motor vehicle" has been given the widest interpretation by the Apex Court as also other Courts in the country having regard to the purpose underlying the motor vehicle legislation. If a tanker turned turtle explodes hours after the accident causing death of those who had gathered there to collect petrol that was leaking from the tanker, if a passenger who after the motor vehicle meets with an accident starts rescue operation to help the other trapped passenger and dies in the course of the same, if the pedestrian crushed by a vehicle on account of the bursting of the tyre or an autorickshaw driver killed by the passengers for stealing the autorickshaw can be said to be accidents arising out of the use of a motor vehicle, it is difficult to see how the accident in the instant case resulting in the death of the deceased while he was admittedly traveling in the bus owned by the respondent- Corporation on account of a tree falling on the vehicle can be held otherwise. It is true that but for the falling of the tree on the bus the deceased may not have lost his life, but the use of the vehicle on which the same fell and the death of the deceased are so closely interrelated that it is difficult to treat the death to be an act of God unrelated to such user. We have therefore no difficulty in holding that the Tribunal was in error in dismissing the claim petition on the ground that the accident in question had not arisen out of the use of the motor vehicle.

13.20. By relying on **Sulochana,** he submits that the expression "arising out of the use of a motor vehicle" has been given a wide interpretation. It is contended that an accident caused by the falling of a tree on a vehicle, while the deceased was travelling therein, would constitute an accident arising out of the use of the motor vehicle, notwithstanding that the immediate cause was the falling of the tree. The decision is relied upon to contend that the causal connection between the use of the vehicle and the resulting injury or death need not be direct or exclusive.

13.21. His submission is that there is no liability which can be imposed on the BBMP. Since BBMP is only a regulatory authority for a tree situated in a private land and damages caused on account of the said tree outside the private land cannot make the BBMP liable.

13.22. Without prejudice to the aforesaid arguments, he submits that even if the principles applicable to a motor accident were to be applicable to the present matter, it is the income fixed for the purpose of conduct of Lok-Adalat which is required to be

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considered and the year of the incident, the monthly salary was fixed at Rs. 16,500/-. The disability has to be taken as 85% as per the certification made and cannot be extrapolated to 100% on the ground that the petitioner is functionally disabled 100%.

13.23. His submission is that the claim made by the petitioner for a sum of Rs. 5,00,000/- on account of pain and suffering is too exorbitant and only an amount of Rs. 1,00,000/- could be awarded.

13.24. Insofar as loss of amenities are concerned, he again submits that the claim for a sum of Rs.5,00,000/- is exorbitant and only a sum of Rs.1,00,000/- could be awarded.

13.25. His submission in respect of incidental expenses and attendant charges is that a maximum of Rs. 50,000/- could be awarded. The claim in respect of future medical expenses is completely unreasonable and exorbitant. Only a sum of Rs.50,000/- could be awarded on that account.

13.26. He has no dispute as regards the payment of the actual medical expenses of a sum of Rs. 24,44,271/-. His submission is that loss of income can only be provided during the treatment phase and not otherwise, which could only be a sum of Rs. 66,000, that is, the loss of income could only be for a period of treatment, that is for a period of 4 months, [16,500 x 4] = 66,000/-. The total payment that could be made as compensation is as under:-

Head	Amount in Rs.
Loss of future earnings [16,500 + 40% future prospects x 85% x 12 x 14	32,98,320
Pain & suffering	1,00,000
Loss of amenities	1,00,000
Incidental expenses & attendant charges	50,000

13.27. His submission is that the claim made by the petitioner is to unjustly enrich himself. A proceeding before the Court cannot be used for such a purpose. The compensation to be awarded can only be just and reasonable and not exorbitant.

13.28. He relies on the judgment of this Court in the case of **Dr. V.L. Nandish vs. The Commissioner, BBMP and others**[6] more particularly, Paras 2, 3 and 5 which are reproduced hereunder for easy reference:

> **2.** The grievance of the petitioner is that the petitioner being the owner of property bearing No. 1368/31st B Cross, 4T Block, Jayanagar, Bengaluru, by constructing a residential house has been enjoying the same for last 40 years. A tree growing in the neighbouring house No.1367, 31st B Cross, 4th T Block,

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Jayanagar, Bengaluru, had started leaning on to the property of the petitioner and it is in that background, the petitioner made several requests to neighbouring property owners to remove the said tree to address the threat posed by the tree to the life and liberty of the petitioner. When the said neighbour did not take any action, the petitioner had approached the Corporation authorities to do the needful, despite which no action was taken.

3.Notice having been served to the Corporation, the Corporation initially contended that permission for removal of a tree can only be granted to the owner of the land on which the tree is located and cannot be granted to a neighbouring owner. When it was pointed out to the counsel for the Corporation that if the said land owner was not interested in taking any steps on account of the falling of the tree not affecting that land owner but affecting the neighbouring land owner, the interest of the neighbouring owner would also have to be taken into consideration by considering the application after inspecting and examining the tree.

5.Sri.N.K. Ramesh, learned counsel fairly acceded to the request and thereafter the tree has been removed since there was no permission required under the Karnataka Preservation of Trees Act, 1976 which would not apply to dangerous trees. On enquiry with Sri.N.K. Ramesh, as to whether there is any procedure adopted by the Corporation in such circumstances, he had submitted that there is no such procedure, but, however Standard Operating Procedure [SOP] would be drawn up. Today, a memo along with SOP guidelines/parameters adopted by Tree Officers/Deputy Conservator of Forest, BBMP for felling dangerous trees has been placed on record. Same reads as under:

> **Standard Operating Procedure (SOP) Guidelines/Parameters adopted by the Tree Officer/Deputy Conservator of Forests, BBMP for felling a dangerous tree Introduction**

Trees being the vital resources for the survival of all living beings, still poses a severe risk when the tree is dried/damaged, causes threat to lives and property. Hence regular maintenance of tree is required to prune the dried and dangerous branches of the trees standing on the roadside/inside the public properties or inside the private properties. Further many complaints are being received by public for removal of dangerous/dried trees. Presently the Forest Wing, Bruhat Bengaluru Mahanagara Palike has adopted certain parameters/guidelines to prune/fell the dangerous trees and also to avoid unlawful tree felling without the knowledge of the Forest department.

In pursuance to the Hon'ble High Court of Karnataka Orders dtd. 07.09.2023 in the Writ Petition 17877/2023.

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"..... is granted two weeks' time to place on record the Standard Operation Procedure or guidelines that are in place with the BBMP and as to what action the Tree Officer and or the Corporation, would take whett a complaint/representation application is filed indicating the there is a danger posed to life or property on account of a particular tree. If no guidelines are in place then what are the steps that the respondents are proposing to take in relation there to "

Hon'ble High Court of Karnataka Orders dtd. 20.08.2018 in the Writ Petition 17841/2018

".....However, we make it clear that it is reported to the Tree Officer that due to the condition of a tree or trees, there is an imminent danger to the life or property, notwithstanding the Order dtd. 23 April 2019, in case of such emergency, the Tree Officer is entitled to grant permission for felling of trees. However, if such power is exercised, the Tree Officer or Officers shall submit a report to this Court in writing setting out the details of the permission granted."

Therefore in obedience to the above stated directions, the references/guidelines/parameters which are being followed by the Tree Officer/Deputy Conservator of Forests, Forest wing, BBMP are stated below wherein the tree has been considered as dangerous tree.

The Tree Officer/Deputy Conservator of Forests conducted a Meeting on 11.09.2023 with the Assistant Conservator of Forests and Range Forest Officers and briefed the parameters/guidelines to be followed for felling of dangerous tree. Further discussed about the conditions of the trees which could be categorised as dangerous tree, the details are as follows:

- Base of the tree is infested with insects/termites, hollow or weak

- Roots of the tree are exposed on the Road - Dried tree

- Very tall tree which tend to fall during strong winds - Tree obstructing traffic

- Tree standing near High Tension Electrical lines

- Tree damaging structural buildings and bridges

- Silviculturally matured tree inside private land

Further during the TEC Meeting held on 16.09.2023, the subject was placed before the Tree Expert Committee for discussion on draft formulation of Standard Operating Procedure (SOP). The Committee suggested the following guidelines/parameters to assess whether the dangerous tree and causing threat to the public and property.

Existing regulations/guidelines:

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1. As per Municipal Corporations, Karnataka Act, 1977- Precautions in case of dangerous trees:

i. If any tree or any branch of a tree or the fruit of any tree be deemed by the Commissioner to be likely to fall and thereby to endanger any person or any structure, the Commissioner may by notice require the owner of the said tree to secure, lop or cut down the said tree or remove the fruit so as to prevent any danger therefrom.

ii. If immediate action is necessary, the Commissioner may himself before giving such notice or before the period of notice expires secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or to take such temporary measure, as he thinks fit to prevent danger, and the cost of so doing shall be recoverable from the owner of the tree in the manner provided in section 450.

2. As per KPT Act and norms, 1976

In this context, the Tree Officer based on the following norms and rules of the KPT Act 1976:

As per the Chapter V, Section 08, Sub-Section 03 states:

Provided that permission shall not be refused, if the tree,

(i) is dead, diseased or wind-fallen; or

(ii) has silviculturally matured: or

(iii) constitutes a danger to life or property; or

(iv) constitutes obstruction to traffic; or

(v) is substantially damaged or destroyed by fire, lightning, rain or other natural causes; or

(vi) is required in rural areas to be removed either for extension of the cultivation in areas specified in Schedule II (except where such removal does not involve felling of all trees in the areas proposed for cultivation, extension of cultivation or change in crop cultivation or for the bona fide use of the applicant..".

3. Hon'ble High Court of Karnataka Orders dtd. 20.08.2018 in the Writ Petition 17841/2018

".....However, we make it clear that it is reported to the Tree Officer that due to the condition of a tree or trees, there is an imminent danger to the life or property. notwithstanding the Order did 23rd April 2019, in case of such emergency, the Tree Officer is entitled to grant permission for felling of trees.

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However, if such power is exercised, the Tree Officer or Officers shall submit a report to this Court in writing setting out the details of the permission granted."

In consideration of the above points, the forest officer/field staff should meticulously review the applications and assess the field/site and tree conditions in the following lines;

1. The overall structure (symmetric/asymmetrie, bent/lean etc.) of the tree. (The decision is to be taken in condition to the leaning angle and the proximity of people and properties)

2. Status of the leaves/canopy symptoms (discolouration, dried leaves, galls etc.).

(The decision is to be taken in condition to the percentage (90%) of leaf symptoms and prevailing season)

3. Status of branches (dried, partially dried etc.), branch union (accumulation of barks, oozing of sap etc.) and remnants of pruned branches.

4. Status of the trunk for external cavities (40-50% of the defective portion of the trunk), vertical splits (all along the clear bole), canker (mechanical injuries 60- 70% of the defective portion of the trunk), bark distortion etc.

5. Status of the collar region (decay/rot 40-50% of the defective portion of the trunk, visible fungal fruiting bodies) of the trees.

6. Proximity and depth (approximate) of building or concrete structures in and around the tree.

7. Frequency of soil/utility work in and around the tree (for roadside trees).

8. Any other major conditions as noted.

In concern to the above site/tree conditions arrived out visual assessment, the field officer should regularly monitor and assess trees (target tree with priority) standing on the roadside, bus stand, parking area etc., where people gather and properties are involved.

9. Assessment of the internal hollow/decay of the collar region of a tree is also equally essential to predict the condition of a tree for its failure. In this line, it was suggested to have Sonic Tomography, a device to assess the tree's internal trunk status, detect decay in and also colour region.

In addition following points were suggested:

10. Visualization and assessment of the tree have to be mentioned in detail in the Mahazar completely by the Dy RFO's/RFO's.

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11. Ascertain the correct reason and mention the same in the Mahazar for the removal of the tree.

12. The Mahazar of the tree has to be enclosed with relevant and supportive photographs.

13. Template 02 as prescribed in the Memorandum of Procedure has to be prepared for the dangerous tree and documented along with Mahazar, photographs and other documents.

14. In the case of a disputed tree, the Tree Officer may cancel or suspend the permission granted under Section 8. after giving an opportunity of being heard to the guarantee and after recording reasons therefore. (As per Section 8A of KPT Act 1976).

The Standard Operation Procedure (SOP) to be followed by the Tree Officer, Forest Wing, BHME for removal of dangerous tree:

a. The Application seeking permission for removal of the dangerous tree/branches which an causing threat to the lives of persons and properties. The application should consists of documents (inter alia as prescribed according to KPT Act 1976)

- Purpose/reason for removal of tree

- Location of the tree with GPS coordinates

- Tree details viz., species, girth, height etc..

- Photographs

b. On receipt of the Application, the Tree Officer, which are imminent threat to life and property are handed over to the concerned zonal Range Forest Officer Dy, RFOs as per the Section 8 of KPT Act 1976 and also as per the Hon'ble High Court Orders in WP 17841/2018, dtd 20.08.2019.

c. The Field forest Officer will visit the site/spot and draw the spot Mahazar through visually assessing the tree completely and mentioning the exact genuine reasons along with supportive photographs

d. The Template 02 (sample copy enclosed) as prescribed in the Memorandum of Procedure (MOP) has to be prepared by the concerned Range Forest Officer, certified by the concerned Assistant Conservator of Forests and decision taken by the Deputy Conservator of Forests. The MOP is adopted to assess the trees (for more than 50 trees) pertaining to applications submitted under Karnataka Preservation of Trees Act, 1976 submitted to Hon'ble High Court of Karnataka during December 2020.

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e. The Tree Officer shall make all possible endeavors to dispose of the application received as a matter of emergency. (As per the Section 8 of the KPT Act the Tree Officer shall dispose of the application received within a period of three months from the date of its receipt). Further, in case of heavy rain, reasonable time is required to fell the tree and dispose the application.

f. The Tree Officer may cancel or suspend the permission granted under Section 08 on any other grounds specified below, after giving an opportunity of being heard to the guarantee and after recording reasons therefore, viz., as per KPT Act 1976.

- Furnishing of false or wrong information to obtain permission;

- Discovery of defects in title;

- Misuse of felling permission;

- Non-fulfillment of conditions of felling permission;

- Violation of any provision of this Act or the rules or orders made there under.

- Felling of unpermitted trees, - Dispute between guarantee and others.

g. Precautions in case of dangerous trees as per Section 323 of Municipal Corporations Karnataka Act 1977. The Commissioner Tree Officer has to abide by the above norms, for removal of any tree or any branch of a tree or the fruit of any tree to be likely to fall and thereby to endanger any person or any structure so as to prevent any danger wherein the cost of so doing shall be recoverable from the owner of the tree in the manner provided in Section 470 of Municipal Corporations, Karnataka Act, 1977.

13.29. By relying on **Dr. V.L. Nandish**, learned counsel submits that the BBMP has a duty to take appropriate measures in respect of trees which pose a danger to life or property. It is submitted that the judgment also resulted in the formulation of an SOP prescribing parameters for identification, assessment and removal of dangerous trees, including roadside trees, and requiring field inspection and regular monitoring of trees posing a potential threat.

13.30. He therefore submits that the question of the BBMP's liability must be examined in the context of whether the tree in question was, or could reasonably have been, identified as a dangerous tree and whether the prescribed safeguards and monitoring requirements had been complied with, all of which require trial and the same cannot be adjudicated in a writ petition.

13.31. **He further relies on the judgment of the Hon'ble Supreme Court in the case of Rajkot Municipal Corporation vs. Manjulben Jayantilal Nakum and others (1997) 9**

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SCC 552 : 1997 Legal Eagle (SC) 71 , more particularly, Paras 14 to 18, 56 and 57, 62 and 63, which are reproduced hereunder for easy reference:

> **14.** Negligence has been viewed in three ways. Firstly involving a careless state of mind; secondly, a careless conduct; and thirdly, a tort in itself. Every case giving rise to tortious liability, consists of injury and damage done due to negligence. Injury and damage may be found due to breach of contract or tort. We are concerned in this case with the injury and damage in tort. Therefore, it is necessary to dwell, in depth, on strict liability, absolute liability or special liability. In the present case, the omission alleged is to take care of periodical check-up of the condition of the trees. The degree of liability depends upon the degree of mental element. The elements of tort of negligence, therefore, consist in (a) duty of care; (b) duty owed to the plaintiff; and (c) it has been carelessly breached. Negligence does not give rise to liability unless the law fastens the duty of care in given circumstances. Duty is an obligation recognised by law to avoid conduct brought with unreasonable risk of damage to another. The question whether duty consists in a particular situation involves determination as a question of law.
>
> **15.** Negligence would include both acts and omissions involving unreasonable risk of having done harm to another. The breach of duty must cause damage. How much of the damage to be compensated by the defendant should be attributed to his wilful conduct and how much to his wilful negligence or careless conduct or remissness in performance of duty, are all relevant facts to be considered in a given act or omission in adjudging duty of care. The element of carelessness or the breach of duty and whether that duty is towards the plaintiff or the class of persons to which the plaintiff belongs are important components in tort of negligence. Negligence would, therefore, mean careless conduct in commission or omission of an act, whereby another to whom the plaintiff owed duty of care has suffered damage. The duty of care is crucial in understanding the nature and scope of tort of negligence. The question in each case is whether the defendant has been negligent in the performance of duty or omission thereof. Determination of duty of care also involves statutory action which requires detailed examination. Local authority, when it exercises its public law function, generally owes no private law duty of care. Duty of care must be owed to a person or class of persons to which the plaintiff belongs and must be to avoid causing particular type of injury or damage to his person or property. The court requires to examine the scope of duty of care which the local authority owes to the plaintiff. The court is required to consider the object, scope and breach of the Act. Though the statute is of general character, since the Government or local authority is entrusted with the duty to implement the

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law, though at its discretion, and if damage is done in execution thereof, what requires to be examined is whether the aforestated elements of tort of negligence stand attracted. The court is further required to consider whether extension of duty of care by the process of interpretation would elongate the public policy or retard its object or frustrate public policy behind the statute and the inevitable effect thereof on the affected plaintiff as well as the general public. No general principle of law is desirable to be laid down as an acid test.

16. While considering whether an action would lie for breach of statutory duty, what requires to be established, among other things, is that the harm complained of is of the kind contemplated by the statute, as was held in Gorris v. Scott [(1874) 9 Exch 125: 43 LJ Ex 92] and Kilgollan v. William Cooke & Co. Ltd. [(1956) 1 WLR 527: (1956) 2 All ER 294, CA]

17. The degree of carelessness in breach of duty would, therefore, vary from case to case and it should not unduly be extended or confined or limited or circumscribed to all situations. The attending circumstances require evaluation and application to a given set of facts in the case on hand. The defendant must be under duty of care not to create latent source of physical danger/damage to the person or property of third party whom he ought to have reasonably foreseen as likely to be affected thereby. Those latent defects cause physical danger to the person or the property giving cause of action and the defendant then is liable to pay damage for tortious liability. It must, therefore, be the essential element to establish that there is positive act or duty and the defendant is under that duty. The court is not to create, by process of interpretation, latent source of physical danger to the person or property of third party when the Act does not envisage that the defendant ought to have reasonably foreseen him as likely to be affected thereby. Negligence connotes inadvertence to the consequences of his conduct which can be a measure of behaviour where one person had been careless in that he did not behave as a prudent man would have done whether by advertence or otherwise. The tort of negligence always requires some form of careless conduct which is usually, although not necessarily, the product of inadvertence. Not every careless conduct which causes damage, however, will give rise to an action in tort. The negligence lies in failure to take such steps as a reasonable, prudent man would have taken in the given circumstances. What constitutes carelessness is the conduct and not the result of inadvertence. Thus negligence in this sense is a ground for liability in tort.

18. The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any

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other form of tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of action unless it is breached and it has caused damage to the plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of volenti non fit injuria, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it prima facie creates at the same time corelative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.

56. In Noble v. Harrison [(1926) 2 KB 332: 95 LJKB 813], a branch of a beech tree growing on the defendant's land overhung a highway at a height of 30 feet

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above the ground. In time whether the branch suddenly broke, fell upon the plaintiff's vehicle, and damaged it. In an action by the plaintiff claiming in respect of damage to his vehicle, the county court found that neither the defendant nor his servants knew that the branch was dangerous or that the fracture was due to a latent defect not discoverable by anyreasonably careful inspection. Reversing the judgment of the county court, it was held that the Ryland case [(1868) 3 HL 330: (1861-73) All ER Rep 1] principle had no application inasmuch as a tree was not in itself a dangerous thing and to grow trees was one of the natural uses of the soil. Mere fact that the branch overhung the tree passage of the highway and although the branch proved to be a danger the defendant was not liable, inasmuch as he had not created the danger and had no knowledge, actual or imputed, of its existence. The principle laid down in Barker v. Herbert [(1911) 2 KB 633: (1911-13) All ER Rep 509] was applied. At page 338, Rowlatt J. held that I see no ground for holding that the owner is to become an insurer of nature, or that default is to be imputed to him until it appears, or would appear upon proper inspection, that nature can no longer be relied upon. In Cunliffe v. Bankes [(1945) 1 All ER 459], a tree growing on the defendant's estate fell, owing to its diseased condition, across a highway running besides the estate. The plaintiff's husband was riding a motorcycle along the highway when without any negligence on his part, he collided with the tree and died of his injuries. The plaintiff's action based on negligence was brought under the Fatal Accidents Act, 1846 and the Law Reform (Miscellaneous Provisions) Act, 1934. The trial Judge found the defendant liable. On appeal, reversing the judgment, the Court of Appeal, House of Lords held that a person is not liable for nuisance constituted by the state of his property unless (a) he caused it or by the neglect of some duty he allows it to arise or when it has arisen without his own act or default, he omits to remedy it within a reasonable time after he became or ought to have become aware of it. Therefore, the defendant was not liable. In Caminer v. Northern & London Investment Trust Ltd. [(1950) 2 All ER 486: 1951 AC 88] the respondents were lessees of a block of flats in London street which were occupied by the tenants. In the forecourt of the flats, there was a row of elm trees. On 7-4- 1947, the appellants were driving past the flats when one of the trees fell on their car, wrecking it and injuring the appellants. The tree that had fallen was proved to have been due to a disease of the roots, which was of long standing but the disease had not taken a normal course and there was no indication from the condition of the tree above the ground that it was affected by the disease. The tree was about 130 years' old and according to the evidence it was of middle age. It was never lopped, topped or pollarded. The action was laid for damages for omission to take proper care of the trees. The House of Lords, after a detailed examination

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of the evidence, held that when there has been no evidence that the tree was affected with a disease mere possibility of taking protection was not sufficient as spoken by the expert witnesses. It was, therefore, held that the respondents were not liable for damages. Lord Normand at p. 494 held that:

"What would a reasonable and prudent landlord have done about the tree? There is more than enough evidence of what scientific experts would have thought or done, but there is a paucity of evidence about what a reasonable and prudent landlord would have done."

It was held that there was no evidence to conclude that a reasonable prudent landlord would inspect or cause to be inspected any good-sized tree growing in a place where unsuspecting persons may lawfully approach it and to take any protection since there is no external evidence of any injury. Lord Radcliffe at p. 501 had held that:

"The accepted test that liability only begins when there is apparent in the tree a sign of danger has the advantage that it seems to ignore, or to a large extent to ignore, the distinction between the spot that is much, and the spot that is little, frequented, but, on the other hand, I think that it does end by making the standard of the expert the test of liability. Anyone can own a tree, there is no qualifying examination, but to how many people in this country can be credited as much general knowledge as will warn them that a tree's top is unusually large, or that it is, in fact, diseased, dangerously or otherwise?"

57. It would thus be seen that each case requires to be examined in the light of the special circumstances, viz., whether the defendant owed a duty of care to the plaintiff, whether the plaintiff is a person or a class of persons to which the defendant owed a duty of care, whether the defendant was negligent in performing that duty or omitted to take such reasonable care in the performance of the duty, whether damage must have resulted from that particular duty of care which the defendant owed to the particular plaintiff or class of persons. Public authorities discharge public obligations to the public at large. Therefore, it owes a duty of care at common law to avoid causing present or imminent danger to the safety of the plaintiff or a class of persons to which the plaintiff belongs. It is a statutory duty of care under common law which could give rise to actionable claim in the suit of the individual and it is capable of coexistence alongside a statutory duty. The duty of care imposed on a local authority by law may not be put beyond what the statute expects of the local authority or Corporation to perform the duty. The tort of insuperable negligence would emerge from imminent danger created by a positive act. But the duty of care imposed on local authority by law may be gauged from the circumstances

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in which and the conditions subject to which the duty of care has been imposed on the statutory authority. The imminent danger theory must be viewed keeping at the back of mind the act or conduct creating the danger to the plaintiff or the class of persons to which he belongs and that by negligent conduct the defendant causes damage to the property or person of the plaintiff, though the defendant is not in know of the danger. The defendant also in given circumstances, must owe special responsibility or proximity imposing foreseeable duty to care, to safeguard the plaintiff from the danger or to prevent it from happening.

62. The question, therefore, is whether the respondents in the present case have established the three essential ingredients? The statute enjoins a power to plant trees on the roadsides or in public places. There is no statutory sanction for negligence in that behalf. But the question is whether the statutory function to plant trees gives rise to a duty of maintaining the trees. In a developing society it is but obligatory on every householder, when he constructs a house and equally for a public authority to plant trees and properly nurture them in a healthy condition so as to protect and maintain the eco-friendly environment. But the question is whether the public authority owes a statutory duty towards that class of persons who frequent and passand repass on the public highway or road or the public places. If the local authority/statutory body has neglected to perform the duty of maintaining trees in a healthy condition and when damage, due to fall of the tree occurs, the question emerges whether the neighbour relationship and proximity of the causation and negligence and the duty of care towards the plaintiff have been satisfactorily proved to have existed so as to fasten the defendant with the liability due to tort of negligence. It depends on a variety of facts and circumstances. It is difficult to lay down any set standards for proof thereof. **Take for instance, where a hanging branch of a tree/tree is gradually falling on the ground. The statutory/local authority fails to take timely action to have it cut and removed and one of the passers-by dies when the branch/tree falls on him. Though the injured or the deceased has contributed to the negligence for the injury or death, the local authority etc. is equally liable for its negligence/omission in the performance of the duty because the proximity is anticipated. Suppose a boy not suspecting the danger climbs or reaches the falling tree and gets hurt, the defendant would be liable for tort of negligence. The defect is apparent. Negligence is obvious, proximity and neighbourhood anticipated and lack of duty of care stands established. The plaintiff, in common law action, is entitled to sue for tort of negligence. The authority will be liable to pay the damages for omission or negligence in the performance of the duty.** Take another instance, where while 'A' is passing

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on the road, there is sudden lightning and thunder and 'A' takes shelter under a tree and the lightning falls on the tree and consequently 'A' dies. In this illustration, there is no corresponding obligation or a duty of care on the part of the Corporation or the statutory authority to warn that 'A' should not take shelter under the tree to avoid harm to him. Take yet another instance, where a road is being laid and there is no warning or signal and a cyclist or a motorcyclist during night falls in the ditch, i.e., place of repair due to negligence on the part of the defendant. The injury is caused to the victim/vehicle. The plaintiff is entitled to lay suit for tort of negligence. But in a situation like the present one where the victim being not aware of the disease/decay, the tree suddenly falls in a still weather condition, no one can anticipate and it is difficult to foresee that a tree would fall suddenly and thereby a person who would be passing by on the roadside, would suffer injury or would die in consequence. The Corporation or the authority is not liable to be sued for tort of negligence since the causation is too remote. Novus actus inconveniens snaps the link and, therefore, it is difficult to establish lack of care resulting in damage and foreseeability of the damage. The case in hand falls in this category. Jayantilal was admittedly passing on the roadside to attend to his office duty. The tree suddenly fell and he sustained injury and consequently died. It was difficult to foresee that a tree would fall on him.

63. The conditions in India have not developed to such an extent that a Corporation can keep constant vigil by testing the healthy condition of the trees in the public places, roadsides, highways frequented by passers-by. There is no duty to maintain regular supervision thereof, though the local authority/other authority/owner of a property is under a duty to plant and maintain the tree. The causation for accident is too remote. Consequently, there would be no common law right to file suit for tort of negligence. It would not be just and proper to fasten duty of care and liability for omission thereof. It would be difficult for the local authority etc. to foresee such an occurrence. Under these circumstances, it would be difficult to conclude that the appellant has been negligent in the maintenance of the trees planted by it on the roadsides.

13.32. By relying on **Manjulben Jayantilal Nakum,** learned counsel submits that liability of a local authority for an accident caused by the falling of a tree depends upon the existence of a duty of care, negligence or omission in the performance of that duty, and a proximate causal connection between such breach and the injury. Where a tree or branch suddenly falls without any apparent indication of danger and the occurrence is not reasonably foreseeable, the causation may be too remote to fasten tortious liability upon the municipal authority.

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13.33. Though the learned counsel has in his objections referred to the cases in **Chairman, Railway Board vs. Chandrima Das** [AIR 2000 SC 988], **Nilabati Behera vs. State of Orissa** [1993 AIR 1960], **Chairman, Grid Corporation of Orissa Ltd., (GRIDCO) vs. Sukamani Das** [AIR 1999 SC 3412], **National Insurance Company Limited vs. Pranay Sethi and others** [2017 SCC Online SC 1270] and **Divisional Controller, KSRTC vs. Mahadeva Shetty and another** (2003) 7 SCC 197 : 2003 Legal Eagle (SC) 574 but no reliance is placed on them.

13.34. On the above basis, he submits that a writ petition is not the proper remedy available for adjudicating private law compensation claims. There is no fundamental right which has been violated in the present matter requiring this Court to excise jurisdiction in Article 226 and 227 of the Constitution. There are various disputed questions of fact as also determination of negligence and contributory negligence which would require adjudication before the competent Civil Court. Both the school and the BBMP denying their liability and claiming that the other has to make payment of the compensation who is liable to make payment of compensation would have to be determined by a Civil Court, in a properly instituted civil proceedings. On that ground, he submits that the above petition is required to be dismissed.

14. Sri Girish B.N., learned counsel for the petitioner in rejoinder would submit that:

14.1. There is no suppression made of the receipt of the insurance funds. The amount received as insurance is a partial amount which is to the knowledge of one and all. The fact that it is not stated in the petition as and when filed would not take away the fact of the liability of the respondents. If at all, the suppression could be said to be as on the date of filing of the petition when the petition is being decided, due deduction of the amount received from the insurance company could be made.

14.2. His submission is that insofar as contributory negligence or otherwise, it is not for the petitioner to establish that it is a defence inter se setup by the School and the BBMP. There is no contributing negligence on the part of the petitioner. It is only when there is any contributory negligence alleged on the part of the claimant / petitioner that the petitioner could be relegated to a civil proceedings. The offending parties being the school and the BBMP, they cannot, on the basis of inter se disputes, force the petitioner to approach a Civil Court.

14.3. If at all, it is for this Court to direct joint and civil liability which could be enforced against each of them. His submission, is that the enforcement ought to be against the BBMP and if BBMP were to establish that there is any contributory negligence on the part of the school, the BBMP can always claim that amount from the school by instituting appropriate proceedings against the school. The aggrieved party being the petitioner, the petitioner not having received any money apart from the exgratia

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payment, the lives of the petitioner and his family have been brought to a standstill bringing about undue hardship. It is required for the BBMP to act in a humane way.

14.4. Since there is a submission made by the school that the education of the daughter of the petitioner would be taken care of by the school, his submission is that the education expenses being only provided till 12th standard in terms of school fees etc., the other expenses would still be incurred by the petitioner as also the expenses post the 12th standard would have to be incurred by the petitioner and on that basis, he submits that this Court can decide the appropriate amount to be awarded on that account.

14.5. His submission is that insofar as all other aspects are concerned, there is absolutely no dispute. He reiterates that the tree was standing on the property of the school. The school had categorically indicated that the branches of the tree posed a danger to the school. That the branch could break anytime and would be very dangerous for the school children, residents and moving / parking vehicles on convent road. The said letter though dated 16.02.2024 had been submitted only on 22.02.2024. There was also a delay by the school in submitting the said letter. Both the school and the BBMP were aware that the branch could break anytime and would be very dangerous. This aspect of danger being known to both the school and BBMP, the question of BBMP now claiming that there is an act of God or vis major or force majeure is not sustainable and is liable to be rejected. On the above grounds, he submits that the claim made by the petitioner is required to be allowed as per the calculations submitted. The entire amount be directed to be paid by the BBMP with liberty being reserved to BBMP to claim any contributory negligence from the school.

15. Heard Sri.Girish B.N., learned counsel for the petitioner, Sri.Mohammed Jafar Shah, learned AGA for respondent No.1, Sri.B.S. Karthikeyan, learned counsel for respondents No.2 and 3 and Sri.Lakshmish G., learned counsel for respondent No.4 and perused papers.

16. The points that would arise for determination are:

(i) Whether the petitioner has established that the injuries suffered by him on 07.03.2024 were caused by the falling of the branch of the Gulmohar tree situated within the premises of respondent No.4 (Good Shepherd Convent School) and projecting over the public road?

(ii) Whether the BBMP owed a statutory/public duty to inspect, maintain, prune or cause removal of the said tree/branch, notwithstanding that the tree was situated on private property?

(iii) Whether, prior to the incident, the said tree/branch was known, or ought reasonably to have been known, to pose a danger to persons using the public

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road, and whether the BBMP had notice or knowledge of such danger?

(iv) Whether there was any negligence, omission or failure on the part of the BBMP in discharging its statutory/public duty, and whether such negligence or omission had a proximate causal connection with the injuries suffered by the petitioner?

(v) Whether the fact that the tree was situated within the premises of the school absolves the BBMP of liability, or whether liability, if any, is to be apportioned between the BBMP and the school/owner of the tree having regard to their respective duties and contributory negligence?

(vi) Whether the occurrence can be attributed to an act of God/natural event so as to exclude or limit the liability of the BBMP?

(vii) Whether the disputed questions relating to negligence, causation, notice, compliance with the applicable statutory provisions/SOP and apportionment of liability can appropriately be adjudicated in the present proceedings under Article 226 of the Constitution?

(viii) Whether the petitioner is entitled to compensation in exercise of the public law jurisdiction of this Court and, if so, from which of the respondents and to what extent?

(ix) Whether the petitioner is entitled to reimbursement/compensation towards medical, rehabilitation, physiotherapy and attendant expenses, loss of earning capacity, future medical requirements, pain and suffering, loss of amenities and other consequential losses, and to what extent?

(x) What order or relief?

17. This Court answers the above points as follows:

18. **Answer to Point No. (i): Whether the petitioner has established that the injuries suffered by him on 07.03.2024 were caused by the falling of the branch of the Gulmohar tree situated within the premises of respondent No.4 (Good Shepherd Convent School) and projecting over the public road?**

18.1. Sri Girish B.N., learned counsel for the petitioner, submitted that on 07.03.2024, while the petitioner was walking to his office, a branch of a Gulmohar tree standing inside the compound of respondent No.4-school, broke and fell on his neck, causing him severe injuries to the neck and spinal column. Learned counsel took this Court through the medical records of Bowring Hospital and Sparsh Hospital, the spinal surgery performed on the same day, and the disability certificate issued by Bowring and Lady Curzon Hospital dated 03.04.2025 certifying 85% disability, to submit that the fact and the cause of the injury are demonstrated by contemporaneous medical

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documentation. Learned counsel also placed reliance on the registration of C.C. No.61833/2024 under Section 338 of the Indian Penal Code, 1860 before the XXIX Additional Chief Metropolitan Magistrate, Bengaluru, arising out of the same incident, to show that the occurrence itself is a matter of record and not an afterthought.

18.2. The starting point for any of the points that follow is whether the event pleaded by the petitioner, namely the falling of the tree branch and the resulting injury, is itself established. On this narrow but foundational question, this Court finds that there is no dispute at all between the parties.

18.3. The medical records from Bowring Hospital and Sparsh Hospital, the spinal decompression and stabilisation surgery performed on 07.03.2024, the subsequent admission for rehabilitation from 31.03.2024 to 01.08.2024, and the disability certificate dated 03.04.2025 assessing 85% disability, are all placed on record and have not been challenged as fabricated or unreliable by any of the respondents.

18.4. The registration of a criminal case bearing C.C. No.61833/2024 under Section 338 of the Indian Penal Code, 1860 pending before the XXIX Additional Chief Metropolitan Magistrate, Bengaluru, independently corroborates that the incident of 07.03.2024 did occur in the manner described.

18.5. Equally significant is the conduct of respondent Nos.2 and 4 themselves: the BBMP paid an exgratia amount of Rs.5,00,000/- and the school paid Rs.3,00,000/- to the petitioner while he was still hospitalised, both of which payments were accepted and encashed by the petitioner. Neither respondent has explained these payments except by describing them as gestures of goodwill, but their having been made at all is a strong pointer that both these respondents themselves proceeded on the basis that the tree branch from the school premises caused the petitioner's injuries.

18.6. In these circumstances, this being a fact that is not merely undisputed but is affirmatively supported by medical records, a pending criminal case and the conduct of the parties, this Court has no hesitation in holding that the petitioner has established, to the satisfaction required even in proceedings under Article 226 of the Constitution, that his injuries on 07.03.2024 were caused by the falling of a branch of the Gulmohar tree standing within the premises of respondent No.4 and projecting over the public road.

18.7. This Court answers point No. (i) by holding that the petitioner has established that the injuries suffered by him on 07.03.2024 were caused by the falling of the branch of the Gulmohar tree standing within the premises of respondent No.4(Good Shepherd Convent School) and projecting over the public road.

19. **Answer to Point No. (ii): Whether the BBMP owed a statutory/public duty to inspect, maintain, prune or cause removal of the said tree/branch, notwithstanding**

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that the tree was situated on private property?

19.1. Sri Girish B.N., learned counsel for the petitioner, relies upon the decision of the Hon'ble Supreme Court in the case of **Municipal Corporation of Delhi v. Sushila Devi (Smt.) and others [(1999) 4 SCC 317 : 1999 Legal Eagle (SC) 583], particularly paragraphs 13 and 14, to submit that a municipal authority has a duty to remove a tree or branch which poses a danger to the public, even if the tree stands on private property.**

19.2. He also relies upon the decision of the Hon'ble Division Bench of the Madras High Court in **The Commissioner, Corporation of Chennai v. The State of Tamil Nadu and K. Karthik** [WA No.1199/2012, decided on 17.11.2016], particularly paragraphs 24 and 25, which consider Section 259 of the Chennai City Municipal Corporation Act, 1919. It is submitted that the statutory duty to remove dangerous trees is linked to public safety and is not limited to trees standing on municipal land.

19.3. Reliance is also placed on the decision of this Court in **Dr. V.L. Nandish v. The Commissioner, BBMP and others** [W.P. No.17877/2023], particularly, paragraph 5, wherein the BBMP placed before this Court its Standard Operating Procedure for identification and removal of dangerous trees. According to the petitioner, the said SOP recognises the need to inspect and assess trees, including those standing on private property, where they pose a danger to the public.

19.4. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3, submits that the BBMP is primarily a regulatory authority under the Karnataka Preservation of Trees Act, 1976. According to him, the primary duty to maintain a tree and ensure that it does not endanger persons or property rests upon its owner or occupier.

19.5. He submits that the BBMP cannot enter every private property and inspect trees on its own. Its role is to act when a dangerous tree is brought to its notice by the owner, a neighbouring person or a member of the public. The requirement of BBMP permission for pruning or felling a tree, according to him, does not transfer the responsibility for its maintenance from the owner to the BBMP.

19.6. At the same time, he relies upon **Dr. V.L. Nandish** and the SOP to submit that the BBMP has a procedure for dealing with dangerous trees and that it has acted in accordance with that procedure in the present case.

19.7. Sri Lakshmish G., learned counsel for respondent No.4-school, submits that the school could not itself cut, lop or remove the tree or its branches without BBMP permission. He therefore contends that the statutory responsibility to deal with a dangerous tree, including one situated on private property, rests with the BBMP.

19.8. The question is not whether the BBMP owned the tree. The tree stood within the school premises and was therefore not owned by the BBMP. The question is whether

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the BBMP nevertheless had a statutory or public duty to act in relation to a dangerous tree situated on private property.

19.9. The Standard Operating Procedure placed before this Court in **Dr. V.L. Nandish** (paragraph 5) is relevant in this regard. It provides for monitoring, inspection and assessment of trees standing on roadsides, public places and private properties where they may pose a danger to persons or property. It also recognises the need to prune or remove dried or dangerous branches, including branches of trees situated on private land.

19.10. Section 323 of the Karnataka Municipal Corporations Act, 1976, is reproduced hereunder for easy reference:

> **323.Precautions in case of dangerous trees.**-
>
> (1) If any tree or any branch of a tree or the fruit of any tree be deemed by the Commissioner to be likely to fall and thereby to endanger any person or any structure, the Commissioner may by notice require the owner of the said tree to secure, lop or cut down the said tree or remove the fruit so as to prevent any danger therefrom.
>
> (2) If immediate action is necessary, the Commissioner may himself before giving such notice or before the period of notice expires secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or to take such temporary measure, as he thinks fit to prevent danger, and the cost of so doing shall be recoverable from the owner of the tree in the manner provided in section 470.

19.11. Section 323 empowers the Commissioner to require the owner of a dangerous tree to secure, lop or cut it down where it is likely to fall and endanger any person or structure. Where immediate action is necessary, the Commissioner may also take such action without waiting for the notice period. The cost may thereafter be recovered from the owner of the tree under Section 470 of the Karnataka Municipal Corporations Act, 1976, which is reproduced hereunder for easy reference:

> **470. Recovery of sums due as taxes.—** All costs, damages, penalties, compensation, charges, fees, rents, expenses, contributions and other sums which under this Act or any rule, bye-law or regulation made thereunder or any other law or under any contract including a contract in respect of water-supply or drainage made in accordance with this Act, and the rules, bye-laws and regulations are due by any person to the corporation shall, if thereis no special provision in this Act for their recovery be demanded by bill, containing particulars of the demand and notice of the liability incurred in default of payment and may be recovered in the manner provided in Chapter X unless

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within fifteen days from the date of service of the bill such person shall have applied to the District Court having jurisdiction, under section 471.

19.12. The Karnataka Preservation of Trees Act, 1976 also recognises that a tree which constitutes a danger to life or property requires special consideration. The statutory scheme, read with the SOP, therefore indicates that while the owner of the tree has a duty to bring a dangerous tree to the notice of the BBMP and cannot ordinarily act without permission, the BBMP has the power and corresponding duty to act once the danger is brought to its notice or otherwise comes to its knowledge.

19.13. The decision in **K. Karthik** (paragraphs 24 and 25), though rendered under the corresponding provisions of the Chennai City Municipal Corporation Act, supports the same principle. The statutory provisions considered therein place responsibility on the Corporation to deal with dangerous trees in the interest of public safety. The relevant provisions of the Karnataka Municipal Corporations Act, 1976 are substantially similar.

19.14. This, however, does not mean that the BBMP is required to inspect every tree standing on every private property in the city. Its duty arises when it has notice, or when the circumstances are such that it ought reasonably to have become aware, that a tree or branch poses a danger to the public. Once such danger is brought to its notice, the BBMP is required to act with reasonable promptness and diligence.

19.15. In the present case, therefore, the fact that the tree stood within the school premises does not, by itself, absolve the BBMP of its statutory or public duty. Whether that duty was breached, however, would depend upon the facts relating to the condition of the tree, the information available to the BBMP, the date and nature of the notice received, the action taken thereafter, and whether such action was reasonably prompt.

19.16. This Court answers point No. (ii) by holding that the BBMP owed a statutory and public duty in relation to the tree/branch in question, notwithstanding that the tree stood on the private premises of respondent No.4.

20. **Answer to Point No. (iii): Whether, prior to the incident, the said tree/branch was known, or ought reasonably to have been known, to pose a danger to persons using the public road, and whether the BBMP had notice or knowledge of such danger?**

20.1. Learned counsel for the petitioner, in rejoinder, submitted that there is no real dispute regarding the relevant facts. He referred to the school's letter dated 16.02.2024 addressed to the BBMP, wherein the school had specifically informed the BBMP that a thick branch of the Gulmohar tree was projecting over the road and that the branch "could break at any time", posing danger to “school children, residents and vehicles using Convent Road”.

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20.2. It was submitted that, although the letter was dated 16.02.2024, it was submitted to the BBMP on 22.02.2024. Thus, both the school and the BBMP were aware, well before the incident of 07.03.2024, of the condition of the particular branch and the danger which it posed.

20.3. Learned counsel therefore submitted that the plea of an "act of God" or "force majeure" cannot be accepted. Once the possibility of the particular branch breaking had been specifically reported, its subsequent fall could not be treated as an unforeseen event without considering the prior warning.

20.4. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3, admitted that the school had addressed a letter dated 16.02.2024 submitted to the BBMP on 22.02.2024 stating that a thick branch of the Gulmohar tree was projecting over the road, "could break at any time" and was "very dangerous" to school children, residents and vehicles. His submission was that the letter also establishes that the school itself was aware of the danger. According to him, the school, being the owner of the tree, ought to have taken immediate steps to cordon off the area and ensure removal of the branch, particularly since children were studying in the school. He further submitted that the BBMP acted upon the representation and granted permission to prune the branch on 07.03.2024 itself, that is, on the date of the incident. According to him, the period taken to process the request cannot, by itself, be regarded as unreasonable.

20.5. Sri Lakshmish G., learned counsel for respondent No.4-school, submitted that the school had acted proactively by informing the BBMP nearly twenty days before the incident. According to him, the school had brought the danger to the notice of the authority competent to grant permission for pruning or removal of the branch. He submitted that the school could not itself remove or substantially prune the branch without BBMP permission. It was therefore contended that the failure to remove the branch before the incident could not be attributed to the school.

20.6. There is no material dispute regarding the basic facts relevant to this point. The dispute is about the legal consequence of those facts, to which this point requires answering.

20.7. The school's letter dated 16.02.2024 submitted to the BBMP on 22.02.2024 is of considerable significance. It did not merely make a general request regarding the maintenance of trees. It identified the particular Gulmohar tree and the thick branch projecting over the road. The school specifically stated that the branch "could break anytime" and was "very dangerous" to school children, residents and vehicles. The letter was submitted to the BBMP on 22.02.2024. The BBMP admits receipt of the letter and also admits that it processed the request and granted permission to prune the branch on 07.03.2024. Thus, before the incident, the danger posed by the very

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branch which subsequently fell had been identified and communicated in writing to the BBMP.

20.8. This is not a case where knowledge of the danger has to be inferred merely from the age, size or condition of the tree. The danger had been specifically identified by the school and brought to the notice of the BBMP. The question of constructive knowledge, therefore, does not arise in the first instance. There is evidence of actual knowledge. The distinction is important. Where there is no prior warning, it may be necessary to consider whether a reasonable authority ought to have noticed the danger from the condition or location of the tree. In the present case, however, the particular danger had already been brought to the attention of the BBMP.

20.9. The Hon'ble Supreme Court in **Sushila Devi**, in paragraph 13, while considering the liability arising from a dangerous tree, held:

> "By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one **which is either known or should have been known to the defendant,** then the defendant is liable for any injury caused by the fall of the tree … The premises must be maintained in a safe state of repair."

20.10. The principle stated by the Hon'ble Supreme Court is that where the defect is "known or should have been known", the person responsible cannot ignore the danger and avoid liability for the resulting injury.

20.11. The present case is factually stronger in this regard. In **Sushila Devi** (paragraph 13), the question of knowledge had to be considered with reference to the condition of the tree. In the present case, the danger posed by the particular branch had been expressly recorded in writing and communicated to the BBMP before the incident. The contention of the respondents that the school itself knew of the danger does not alter this finding. On the contrary, it confirms that the danger was known before the incident.

20.12. The plea of "act of God" or "force majeure" also requires to be considered in this factual setting. A natural event may be the immediate cause of the fall of a tree or branch. That, by itself, does not answer the question whether the fall was foreseeable. Where there is no prior indication of danger, a sudden fall caused by an unforeseen natural event may stand on a different footing. But where the possibility of the particular branch falling has already been reported to the authority, the subsequent fall cannot, without further examination, be characterised as an entirely unforeseen event. The relevant consideration is therefore not merely the immediate cause of the fall. It is also whether the risk of the branch falling had been brought to notice before the incident. In the present case, that risk had been specifically identified and

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communicated to the BBMP, as also accepted by the BBMP on account of permission for pruning having been granted.

20.13. The present finding is accordingly based not on hindsight, but on what was known before the incident. The school had identified the danger and communicated it to the BBMP. The BBMP received the representation on 22.02.2024 and was thereby placed on actual notice of the condition of the branch and the risk which it posed to persons using the public road.

20.14. It is accordingly held that the danger was not merely one which the BBMP "ought reasonably to have known". The BBMP had actual knowledge of the specific danger before the incident.

20.15. This Court answers point No. (iii) by holding that, prior to the incident, the particular branch was known to pose a danger to persons using the public road and that the BBMP had actual notice of such danger at least from 22.02.2024.

21. **Answer to Point No. (iv): Whether there was any negligence, omission or failure on the part of the BBMP in discharging its statutory/public duty, and whether such negligence or omission** had a proximate causal connection with the injuries suffered by the petitioner?

21.1. Learned counsel for the petitioner submitted that, once it is established that the BBMP had received prior written notice of the danger posed by the particular branch, its failure to take effective steps before the branch fell amounts to negligence. He relied upon **Sushila Devi** (paragraph 13) and **K. Karthik** (paragraph 38), in support of the submission that failure to discharge a statutory duty to deal with a known dangerous tree, resulting in injury, constitutes negligence.

21.2. He further submitted that the causal connection in the present case is direct. The school had informed the BBMP about the very branch which was projecting over the road and could break at any time. The branch subsequently fell on the petitioner on 07.03.2024. Thus, the injury was not caused by some unrelated or unforeseen event. It was caused by the very danger which had been brought to the notice of the BBMP. According to learned counsel, the fact that the BBMP's permission for pruning the branch was granted only on the date of the incident makes the connection between the omission and the injury even clearer. Had timely action been taken on the representation, the branch could have been removed or the area could at least have been secured before the incident.

21.3. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3, submitted that the BBMP acted "in right earnest" after receiving the school's letter. He contended that a period of about twenty days taken to process an application of this nature cannot, by itself, be regarded as unreasonable. He submitted that the fact that the incident

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occurred on the very day on which permission was granted does not, by itself, establish negligence. He relied upon the decision of the Hon'ble Supreme Court in **Rajkot Municipal Corporation v. Manjulben Jayantilal Nakum and others** [(1997) 9 SCC 552 : 1997 Legal Eagle (SC) 71], particularly paragraphs 62 and 63, in support of the submission that liability can arise only where there is a proximate and reasonably foreseeable connection between the omission of the authority and the injury.

21.4. He relied upon the following observation in paragraph 62:

> "...in a situation like the present one where the victim being not aware of the disease/decay, **the tree suddenly falls in a still weather condition, no one can anticipate and it is difficult to foresee that a tree would fall suddenly and thereby a person who would be passing by on the roadside, would suffer injury or would die in consequence. The Corporation or the authority is not liable to be sued for tort of negligence since the causation is too remote**..."

21.5. He also relied upon the decision of the Hon'ble Supreme Court in **Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy** [(2011) 14 SCC 481 : 2011 Legal Eagle (SC) 892], particularly paragraphs 3, 5, 54 and 55, to submit that the liability of a public authority has to be examined with reference to its statutory obligations and the facts of the particular case. The mere occurrence of an accident, according to him, does not by itself establish negligence or public law liability. It was also submitted that the fall of the branch was an "act of God".

21.6. Sri Lakshmish G., learned counsel for respondent No.4-school, submitted that it was the inaction of the BBMP, and not any omission on the part of the school, which was the true and proximate cause of the injury. He submitted that the school had brought the danger to the notice of the BBMP as soon as it became aware of it and that the school had no independent authority to fell or prune the branch without BBMP permission.

21.7. Two questions arise for consideration under this point.

> 21.7.1. **First, whether the BBMP, after receiving notice of the danger, failed to take the steps which a reasonable authority exercising its statutory powers ought to have taken?**
>
> 21.7.2. **Second, whether that failure had a sufficiently close connection with the petitioner's injury to constitute proximate causation?**

21.8. These questions have to be considered on the facts which have already been found while answering the earlier points.

21.9. This Court has already held under Point No. (iii) that the BBMP had actual and specific notice, at least from 22.02.2024, that the particular branch was projecting over the road, "could break anytime" and was "very dangerous" to school children,

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residents and vehicles. The BBMP was therefore not required to discover the danger on its own. The danger had already been brought to its attention in writing.

21.10. The Standard Operating Procedure placed before this Court by the BBMP itself assumes significance at this stage. The SOP provides that:

> "the Tree Officer **shall make all possible endeavors** to dispose of the application received as a matter of **emergency**..."

21.11. The SOP also recognises the need for immediate action where a tree or branch presents an imminent danger. As noticed while answering Point No. (ii), the relevant provisions empower the Commissioner to take action even without completing the ordinary procedure where: **"if immediate action is necessary"**

21.12. The representation made by the school cannot, therefore, be treated as an ordinary request for routine pruning. The school had specifically stated that the branch "could break anytime" and was "very dangerous" to persons using the road.

21.13. Once the BBMP received such a representation, the question was no longer whether the BBMP had a general responsibility in relation to trees in the city. The question became whether, having been specifically informed of an immediate danger, it acted with reasonable promptness. The BBMP submits that it acted "in right earnest" and that approximately fifteen days for processing the request was not unreasonable. This submission has to be examined in the context of the contents of the school's letter. The time taken cannot be considered in isolation. What may be reasonable for an ordinary pruning request may not be reasonable where the authority has been told that a particular branch is likely to break at any time and is dangerous to children and members of the public.

21.14. The question is not whether every application concerning a tree has to be acted upon immediately or whether the BBMP is required to maintain constant supervision over every tree standing within private premises. That is not the standard laid down by law. The question is whether, after receiving a specific warning that a particular branch "could break anytime" and was "very dangerous", the authority discharged its duty with the degree of urgency which the circumstances required.

21.15. There is no material to show that, during the period after receipt of the complaint and before the incident, the BBMP took any interim protective measure. There is no material to show an urgent inspection, temporary cordoning of the affected portion of the road, warning to road users, restriction of movement below the branch, or any other immediate measure to reduce the identified risk while the application for pruning was being processed.

21.16. The fact that the BBMP ultimately granted permission to prune on 07.03.2024 is relevant, but it does not answer the question whether adequate steps were taken in

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the intervening period. The permission itself shows that the complaint had been acted upon administratively. However, where the complaint specifically described an imminent danger to persons using a public road, administrative processing alone cannot necessarily be treated as sufficient discharge of the public duty. The reasonableness of the response has to be assessed having regard to the nature and urgency of the danger which had been brought to the authority's notice.

21.17. In the circumstances, treating the complaint as an ordinary application and allowing the identified danger to remain unaddressed, without any demonstrated interim protective measure, falls short of the degree of care and urgency contemplated by the BBMP's own procedure.

21.18. **The statutory test:** The principle stated by the Hon'ble Supreme Court in **Manjulben Jayantilal Nakum,** is relevant. At paragraph 18, the Hon'ble Supreme Court has held:

> **"…The plaintiff must show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action;**
>
> **(c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury."**

21.19. Applying these requirements, the first condition is satisfied since the injury suffered by the petitioner is of the kind which the statutory and public safety obligations concerning dangerous trees are intended to prevent. The second is satisfied by the statutory duties and powers vested in the municipal authority in relation to dangerous trees and public safety. The third is satisfied because, despite actual notice of the specific danger, no effective protective action is shown to have been taken before the incident. The fourth is also satisfied because the very branch about which the warning had been given fell and struck the petitioner on the public road.

21.20. The causal chain in the present case is neither speculative nor remote. The school had identified the branch as dangerous and had communicated the danger to the BBMP. The BBMP, therefore, had actual notice of the specific risk. Despite such notice, no effective preventive or protective measure is shown to have been taken before the incident. The very branch which had been identified as dangerous thereafter fell, striking the petitioner and causing the injuries complained of.

21.21. This sequence is significant. The risk which ultimately materialised was not an unforeseen or wholly independent event. It was the very danger which had earlier been identified and brought to the notice of the authority responsible for taking preventive measures. The danger remained unaddressed and thereafter materialised in the manner apprehended. The issue, therefore, is not merely whether the BBMP

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could have anticipated that some tree-related danger might arise, but whether, having received actual information regarding the particular danger, it acted reasonably and within a reasonable time to prevent the harm or, at the least, to reduce the risk to persons who might be exposed to it.

21.22. **Foreseeability:** The reliance placed by the BBMP on paragraph 62 of **Manjulben Jayantilal Nakum** requires consideration wherein, the Hon'ble Supreme Court observed:

> "…in a situation like the present one where the victim being not aware of the disease/decay, **the tree suddenly falls in a still weather condition, no one can anticipate and it is difficult to foresee that a tree would fall suddenly** and thereby a person who would be passing by on the roadside, would suffer injuryor would die in consequence. The **Corporation or the authority is not liable to be sued for tort of negligence since the causation is too remote**…"

21.23. The BBMP also relies upon the observation that a sudden fall of a tree, in circumstances where the defect was not known or reasonably foreseeable, may not result in municipal liability. That principle is understandable. A municipal authority cannot be made an insurer against every accident involving a tree. A tree may appear healthy and yet fall without warning. In such a case, the connection between the authority's conduct and the injury may indeed be too remote. However, the same paragraph draws an important distinction. The Hon'ble Supreme Court observed:

> "…Take for instance, where a hanging branch of a tree/tree **is gradually falling on the ground**. The statutory/local authority **fails to take timely action** to have it cut and removed and one of the passers-by dies when the branch/tree falls on him. Though the injured or the deceased has contributed to the negligence for the injury or death, the local authority etc. is equally liable for its negligence/omission in the performance of the duty because the proximity is anticipated… The defect is apparent. **Negligence is obvious, proximity and neighbourhood anticipated and lack of duty of care stands established...**"

21.24. The facts of the present case fall substantially within the second situation and not the first. The branch was not an unknown danger. Its condition and location had been specifically brought to the notice of the BBMP. The warning was that it "could break anytime" and was "very dangerous". The accident occurred before any effective protective measure is shown to have been taken. The very branch which had been identified as dangerous fell and caused the injury.

21.25. The plea that the incident was an "act of God" or "force majeure" cannot, in these circumstances, be considered in isolation from the prior warning. The immediate physical cause of the injury may have been the falling of the branch. But the relevant question is whether the occurrence was so unforeseeable that no reasonable

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protective action was possible. Once the specific danger had been identified and communicated to the authority, the answer is different. The possibility of the branch falling was no longer merely hypothetical; it had been expressly brought to the authority's notice.

21.26. No duty of constant supervision, but a duty to respond to actual notice: paragraph 63 of **Manjulben Jayantilal Nakum** also states:

> "The conditions in India have not developed to such an extent that a Corporation can keep constant vigil by testing the healthy condition of the trees in the public places, roadsides, highways frequented by passers-by. There is no duty to maintain regular supervision thereof, though the local authority/other authority/owner of a property is under a duty to plant and maintain the tree. The causation for accident is too remote… It would be difficult for the local authority etc. to foresee such an occurrence..."

21.27. This Court accepts that a municipal authority cannot be expected to maintain continuous or constant supervision over every tree, particularly every tree standing within private premises. The law does not impose an absolute duty to inspect every such tree at all times. But that is not the situation here. The present case concerns actual notice of a specific danger. Once such notice is received, the question is no longer whether the authority ought to have discovered the danger on its own. The danger had already been brought to its attention. Paragraph 63, therefore, cannot be read as absolving the authority from acting upon a specific and credible warning merely because there is no general duty of constant supervision. The absence of a duty of continuous inspection and the existence of a duty to respond to an identified danger are two different propositions.

21.28. **The responsibility of the school:** At the same time, the responsibility of the school cannot be completely disregarded.

21.29. The school itself had identified the danger and had approached the BBMP before the incident. It was, therefore, plainly aware of the condition of the branch. The fact that the school could not itself cut, lop or remove the branch without the requisite permission does not necessarily mean that it had no responsibility to take any precaution whatsoever.

21.30. The nature and extent of the school's responsibility, however, must be considered in the light of the area under its control. Within the school premises, the school could reasonably have taken temporary measures to protect students, teachers, staff and visitors from a danger of which it was aware. Depending upon the circumstances, such measures could include restricting access to the affected portion of the premises, warning students and staff, altering movement routes, or taking other

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reasonable steps to prevent persons within the school premises from being exposed to the danger.

21.31. The position would be different insofar as the public road is concerned. The school did not own or control the public road and could not, merely by reason of being the owner of the adjoining premises, close the road, regulate public traffic or undertake an act for which statutory permission was required. Its responsibility cannot, therefore, be equated with that of the BBMP. This distinction is important. If a person had been injured within the school premises by the falling branch, the school's prior knowledge of the danger and its ability to take reasonable protective measures within its premises would have been directly relevant in determining its responsibility. In the present case, however, the petitioner was travelling on the public road. The immediate statutory responsibility for dealing with a dangerous branch projecting over that road rested with the BBMP.

21.32. The fact that the school had itself brought the danger to the BBMP's notice also strengthens, rather than weakens, the finding that the BBMP had actual knowledge of the risk.

21.33. The question is thus not whether the school or the BBMP alone was responsible for everything that occurred. Each had a different sphere of responsibility. The school had knowledge of the danger and control over its own premises. The BBMP had statutory powers in relation to the dangerous tree and the safety of persons using the public road. The conduct of each has to be assessed against the duty which it was capable of performing.

21.34. The reliance placed by learned counsel for respondent No. 2 and 3-BBMP on the decision of the Hon'ble Supreme Court in the case of **Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, [(2011) 14 SCC 481 : 2011 Legal Eagle (SC) 892] (paragraphs 54 and 55), also does not take the matter further. The decision makes it clear that liability cannot be fastened merely because an accident has occurred. The nature and extent of the statutory obligation, the facts of the case and the conduct of the authority have to be examined.**

21.35. That principle is not in dispute. The present finding of negligence is not based merely on the fact that the branch fell. It is based on the fact that the danger posed by the particular branch had been specifically identified and communicated to the BBMP before the incident; that the BBMP had actual notice of the danger; that its own procedure contemplated treatment of such an application as an emergency; and that no effective interim protective measure is shown to have been taken before the branch fell. The distinction between an unexpected accident and a known danger which remains unaddressed is therefore material.

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21.36. **Proximate connection with the injury:** The final question is whether the BBMP's omission had a sufficiently proximate connection with the injury suffered by the petitioner. In the facts of this case, the connection cannot be characterised as remote. The danger identified in advance was the possibility of the branch falling. The branch did, in fact, fall during the period in which the BBMP was processing the request for permission to prune it. The petitioner was then travelling on the very public road over which the branch was projecting. The injury was thus the very kind of harm which the warning to the BBMP had identified.

21.37. The sequence of events is direct. There is no intervening act shown to have broken the chain of causation. The occurrence may have been triggered by natural forces, weather conditions or the physical condition of the branch. But those circumstances do not, by themselves, make the resulting injury unforeseeable when the possibility of the branch breaking had already been specifically brought to the notice of the authority.

21.38. This Court is conscious that the BBMP cannot be made an insurer against every falling tree or branch. The finding of liability in this case rests on the narrower and more specific circumstance that a known and specifically identified danger was not dealt with, with the urgency, which the circumstances required, and the identified danger materialised before effective protective action was taken.

21.39. Accordingly, it is held that the BBMP, after receiving actual notice of the dangerous condition of the branch, failed to discharge its statutory/public duty with the degree of promptness and care required in the circumstances. The omission was not merely procedural. It related directly to a known danger affecting users of the public road. The subsequent fall of the very branch identified in the complaint and the injury caused to the petitioner establish a direct and proximate causal connection between the omission and the injury.

21.40. This Court answers Point No.(iv) by holding that there was negligence and omission on the part of the BBMP in discharging its statutory and public duty in respect of the branch in question, in that it failed to treat a specifically reported, imminent danger with the urgency its own Standard Operating Procedure demanded, and that this negligence and omission had a direct and proximate causal connection with the injuries suffered by the petitioner on 07.03.2024, since it was precisely the branch identified in the school's letter, and no other, that fell and struck the petitioner while the BBMP's response to that letter was still pending.

22. **Answer to Point No. (v): Whether the fact that the tree was situated within the premises of the school absolves the BBMP of liability, or whether liability, if any, is to be apportioned between the BBMP and the school/owner of the tree having regard to their respective duties and contributory negligence?**

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22.1. Learned counsel for the petitioner, in rejoinder, submitted that there was no contributory negligence whatsoever on the part of the petitioner. He submitted that the petitioner was merely travelling along a public road when the branch fell upon him and that any question of apportionment was a matter between the school and the BBMP. Such an inter se dispute, according to him, ought not to prejudice the petitioner or reduce the compensation payable to him.

22.2. He submitted that this Court could direct the respondents to be jointly and severally liable for the compensation and that the petitioner should not be required to pursue a dispute between the two respondents as to who should ultimately bear the burden. According to him, the compensation could be enforced against the BBMP and, if the BBMP establishes that the school was also responsible, it would be open to the BBMP to recover the appropriate proportion from the school in appropriate proceedings.

22.3. Learned counsel also drew attention to the undertaking given by the school to bear the educational expenses of the petitioner's daughter until completion of the 12th standard. He submitted that, in view of the undertaking, the original claim of Rs.50,00,000/- towards education would be confined to the expenses, if any, beyond the 12th standard.

22.4. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3, submitted that the tree stood on private land and that the owner or occupier of the land had the primary and continuing duty of care. He submitted that the school had been aware of the danger even prior to 16.02.2024 and ought to have taken immediate precautionary measures, including cordoning off the area and preventing persons from passing beneath the branch, instead of merely writing to the BBMP and waiting for permission. Learned counsel submitted that the fact that permission was required for cutting or pruning did not transfer ownership or the continuing duty of maintenance from the school to the BBMP. According to him, regulatory oversight by the BBMP was not the same as ownership or physical control of the tree.

22.5. Sri Lakshmish G., learned counsel for respondent No.4, submitted that the school could not lawfully cut, lop or remove the branch without permission under the Karnataka Preservation of Trees Act, 1976. According to him, the school had discharged its duty by bringing the danger to the notice of the BBMP and it was the BBMP's subsequent inaction which resulted in the branch remaining in place.

22.6. Learned counsel also placed before the Court the undertaking given by the school, without prejudice to its contention that it bears no liability, to provide free education to the petitioner's daughter until completion of the 12th standard, that being the highest standard offered by the school. It was further submitted that the school had already paid Rs.3,00,000/- to the petitioner as a bona fide gesture.

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22.7. At the outset, it is necessary to clarify that there is no allegation of contributory negligence against the petitioner. No respondent has suggested that the petitioner did anything which contributed to the occurrence. He was using a public road in the ordinary course when the branch fell upon him. There is also no material to suggest that he knew of the danger or could reasonably have anticipated that the branch would fall at that time.

22.8. The question of apportionment, therefore, arises only between the respondents. It cannot be used to reduce the compensation payable to the petitioner merely because the respondents may have different responsibilities as between themselves.

22.9. The fact that the tree stood within the school premises does not, by itself, absolve the BBMP. At the same time, ownership and control of the tree are relevant circumstances in determining the responsibility of the school. The duties of the two respondents were not identical and their respective responsibility has to be examined separately.

22.10. **Duty of the School:** The school was the owner or occupier of the premises in which the tree stood. It was also the first respondent to identify and communicate the danger. The letter dated 16.02.2024 stated that a thick branch of the Gulmohar tree was projecting over the road, that it "could break anytime", and that it was "very dangerous" to school children, residents and vehicles.

22.11. Once the school became aware of such a danger, it could not simply disregard it. It had a duty to take reasonable precautions within the area under its control. At the same time, the school has taken the stand, and the same is not seriously disputed, that it could not itself cut, lop or remove the branch without the requisite permission under the Karnataka Preservation of Trees Act, 1976. Neither the petitioner nor the BBMP has placed before this Court any provision which permitted the school to unilaterally remove the branch in such circumstances. The school was, therefore, required to approach the competent authority.

22.12. The date on which the school did so is, however, significant. The letter is dated 16.02.2024, which was a Friday. It was submitted to the BBMP only on 22.02.2024. No material has been placed before this Court to establish that the school became aware of the dangerous condition on any date earlier than 16.02.2024. The Court must therefore proceed on the basis that 16.02.2024 is the earliest date of knowledge established on the record. If the school had become aware of the danger on 16.02.2024, it could have submitted the letter to the BBMP on that very day. Even if some internal processing was required, it could reasonably have been submitted on the following Monday, 19.02.2024. Instead, the letter was submitted only on 22.02.2024.

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22.13. The Court does not hold that this delay, by itself, establishes negligence. There is no explanation as regards what occurred between 16.02.2024 and 22.02.2024, nor is there any material to show that the delay was deliberate. But the delay is nevertheless a relevant circumstance, particularly because the school itself had described the branch as one which "could break anytime" and as "very dangerous".

22.14. The importance of the delay also lies in its practical consequence. The BBMP received the letter on 22.02.2024 and processed it. Permission to prune the branch was granted on 07.03.2024, which was the very date on which the incident occurred.

22.15. The chronology is thus:

22.15.1. 16.02.2024 – the school became aware of the danger and prepared its letter;

22.15.2. 19.02.2024 – the next working Monday, by which time the communication could reasonably have been submitted;

22.15.3. 22.02.2024 – the letter was actually submitted to and received by the BBMP;

22.15.4. 07.03.2024 – the BBMP granted permission to prune the branch;

22.15.5. 07.03.2024 – before the branch could be removed, it fell upon the petitioner.

22.16. It cannot be said with certainty that, had the letter been submitted on 16.02.2024 or 19.02.2024, the BBMP would necessarily have granted permission and the branch would necessarily have been removed before 07.03.2024. Such a conclusion would be speculative. The Court can, however, take note of the fact that the BBMP did process the request and ultimately granted permission on 07.03.2024. Earlier submission would necessarily have afforded the BBMP additional time to process the request and, depending upon the statutory procedure and the time required for compliance, could have resulted in the branch being removed before the incident.

22.17. The school, therefore, cannot be said to have acted with complete promptness. Its delay in forwarding the complaint is a factor which must be taken into account while considering the respective responsibility of the respondents.

22.18. There was also another precaution available to the school. Even though it could not itself remove the branch without permission, it could have taken reasonable temporary measures within the premises under its control. If the branch posed a danger to students, teachers, staff, visitors or others within the school premises, the school could have restricted access to the affected portion, warned those using the area, altered movement routes or taken other reasonable measures to reduce the risk.

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22.19. The school could not, however, control the public road. It could not close Convent Road, regulate public traffic upon it or remove the branch without the requisite statutory permission. This distinction is important because the petitioner was injured outside the school premises, on the public road.

22.20. Thus, the school had a duty arising from its ownership and control of the premises and the knowledge it had acquired. The BBMP had a different duty arising from its statutory power and responsibility in relation to dangerous trees affecting public safety.

22.21. **The responsibility of the BBMP after receipt of the complaint:** The position of the BBMP is materially different. Once the letter was received on 22.02.2024, the BBMP had actual notice of the particular danger. It was not required to discover the danger on its own. The particular tree and branch had been identified; its projection over the road had been brought to its attention; and the school had expressly stated that the branch "could break anytime" and was "very dangerous".

22.22. The BBMP had the statutory mechanism to deal with such a situation. As noticed while answering Point No.(ii), the Standard Operating Procedure placed on record in **Dr. V.L. Nandish** (paragraph 5), and others recognises the need for maintenance and pruning of dried and dangerous branches, including trees standing "inside the private properties". The procedure also contemplates urgent action where immediate action is necessary.

22.23. The statutory scheme under the Karnataka Preservation of Trees Act, 1976 is also relevant. Proviso to Section 8(3) provides:

> “Provided that permission shall not be refused, if the tree,
>
> (i) is dead, diseased or wind-fallen; or (ii) has silviculturally matured: or (iii) constitutes a danger to life or property; or (iv) constitutes obstruction to traffic; or
>
> (v) is substantially damaged or destroyed by fire, lightning, rain or other natural causes…”

22.24. The significance of this provision is that the requirement of permission does not place a dangerous tree beyond the reach of the statutory authority. The Karnataka Preservation of Trees Act, 1976 itself recognises circumstances in which a tree constitutes a danger to life or property or constitutes obstruction to traffic.

22.25. The school's requirement to obtain permission and the BBMP's responsibility to act upon the request must therefore be read together. The requirement of permission explains why the school could not itself remove the branch. It does not, after the BBMP receives actual notice, justify inaction by the BBMP.

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22.26. As already held under Point No.(iv), the BBMP processed the application and granted permission on 07.03.2024. The mere fact that approximately thirteen days elapsed between receipt of the complaint and grant of permission cannot, in isolation, be treated as negligence. The question is whether the response was reasonable having regard to the nature of the warning received and the danger specifically identified.

22.27. The answer must also take account of the absence of any demonstrated interim protective measure. There is no material to show that, pending consideration of the application, the BBMP caused the dangerous portion of the road to be cordoned off, restricted movement below the branch, caused an urgent inspection to be undertaken, or adopted any other temporary measure to reduce the risk.

22.28. This becomes important because the complaint was not a general complaint regarding a tree standing on private property. It identified a particular branch projecting over a public road and expressly stated that it "could break anytime" and was "very dangerous".

22.29. The BBMP, therefore, cannot rely solely upon the private ownership of the land to escape responsibility. The statutory power which enabled it to regulate the removal or pruning of the branch also enabled it to respond to a specific danger once that danger was brought to its notice.

22.30. **Respective responsibility of the school and the BBMP:** The respective conduct of the two respondents may be summarised in the following manner:

22.30.1. First, the school owned or occupied the premises on which the tree stood and became aware of the dangerous condition.

22.30.2. Secondly, the school prepared a written complaint on 16.02.2024 but submitted it to the BBMP only on 22.02.2024. The delay is a relevant lapse, though there is no material to establish that the school had ignored the danger for a substantially longer period.

22.30.3. Thirdly, the school could not lawfully remove the branch without the requisite permission.

22.30.4. Fourthly, notwithstanding that restriction, the school could have taken reasonable temporary precautions within its own premises.

22.30.5. Fifthly, the BBMP received actual notice of the particular dangerous branch on 22.02.2024.

22.30.6. Sixthly, the BBMP had the statutory power to act upon that notice and ultimately granted permission on 07.03.2024.

22.30.7. Seventhly, there is no material to show that any effective interim measure was taken by the BBMP between 22.02.2024 and 07.03.2024 to

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protect persons using the public road.

22.30.8. Eighthly, the very branch identified in the school's complaint fell on 07.03.2024 and injured the petitioner while he was using the public road.

22.31. These circumstances show that there were responsibilities on both sides, but they were not of the same nature or extent. The school had some responsibility arising from ownership, knowledge and control of its premises. Its delay in forwarding the complaint is a factor which cannot be ignored. It also had the ability to take precautions within its own premises. The BBMP, however, had a statutory responsibility which arose upon receipt of the specific complaint. It had actual notice of the danger, the statutory power to deal with it, and responsibility extending to the safety of persons using the public road. The danger identified in the complaint was the danger which ultimately materialised.

22.32. The decision in of the Division Bench of this Court in the case of **K.K. Umesh Kumar v. Smt. Lijji and others,** [MFA No.6470/2015 order dated 10.09.2020], relied upon by the learned counsel for respondent Nos. 2 and 3- BBMP, illustrates that where more than one person or authority has a role in relation to a falling tree or branch, their respective responsibility may require separate consideration.

22.33. In that case, this Court in paragraph 10 held:

> "It is the duty of the BBMP and the Horticulture Department to look after the maintenance of the trees in the city, that too they should take care of the old trees when it was raining heavily and the branches of the trees were hanging dangerously. Due to their negligence, when the auto was parked under the tree the branches fell on the said auto. Therefore, there is a contributory negligence on the part of the BBMP and the Horticulture Department. … we hold that the driver of the auto is responsible at 50% and the BBMP at 25% and the Horticulture Department at 25% for the occurrence of the impact and the injuries suffered by the claimant."

22.34. The present case has to be decided on its own facts. Here, the school did not have the statutory power to remove the branch without permission. It did, however, take some time to communicate the danger to the BBMP after becoming aware of it. That delay is a relevant circumstance. The school also had the ability to take temporary precautions within its premises. But there is no sufficient material to establish that any omission on the part of the school within that sphere was a proximate cause of the petitioner's injury on the public road.

22.35. The BBMP stood differently. It received actual notice of the particular danger on 22.02.2024. It had the statutory power to act upon that notice. It processed the application and granted permission on the very day on which the incident occurred.

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No effective interim protective measure is shown to have been taken during the intervening period.

22.36. The more immediate and proximate connection with the petitioner's injury is therefore the failure of the BBMP to take effective action after receiving actual notice of the specific danger.

22.37. **Whether the school should bear any part of the compensation:** The Court has considered whether, notwithstanding the above, a proportion of the compensation should be directed to be paid by the school because the tree stood on its premises. On the material presently available, this Court is not persuaded to impose a separate proportion of the compensation upon the school.

22.38. This is not because the school had no duty. It did have a duty. Once it became aware of the dangerous branch, it was expected to act with reasonable promptness, bring the matter to the competent authority and take such temporary precautions as were reasonably within its control. The school did not submit its letter to the BBMP at the earliest possible opportunity. That lapse is relevant. Had the letter been submitted on 16.02.2024 or, at the latest, on 19.02.2024, the BBMP would have had additional time to process the request before 07.03.2024. Since permission was in fact granted on 07.03.2024, it is possible that earlier submission could have enabled earlier removal of the branch. But the Court cannot proceed from possibility to certainty. It cannot be held as a matter of fact that the branch would necessarily have been removed before 07.03.2024 had the complaint been submitted earlier. Nor is there material to establish that the school had ignored the danger for a substantial period before 16.02.2024.

22.39. More importantly, the petitioner's injury occurred on the public road. There is no material to show that any precaution which the school could reasonably have taken within its premises would have prevented the petitioner, who was using the public road, from being struck by the branch.

22.40. The school therefore cannot be said to have been entirely without responsibility, but the material does not establish a sufficient proximate causal connection between its lapse and the petitioner's injury to warrant fastening a separate monetary liability upon it in these proceedings. The primary and predominant responsibility consequently rests with the BBMP.

22.41. The school has already paid Rs.3,00,000/- to the petitioner and has undertaken to provide free education to his daughter until completion of the 12th standard. These commitments have been made before the Court. The undertaking regarding education shall be honoured by respondent No.4. The manner in which the payment and undertaking are to be taken into account while determining the consequential relief shall be considered while answering Points No.(viii), and (x).

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22.42. The payment of Rs.3,00,000/- is stated to have been made as a bona fide gesture and without prejudice to the school's contention that it bears no liability. It is therefore not treated as an admission of legal liability. Similarly, enforcement of the undertaking regarding education does not amount to a finding that the school is legally liable for the injuries suffered by the petitioner.

22.43. **Inter se rights of the respondents:** The petitioner should not be required to await the resolution of any dispute between the respondents regarding their respective responsibility. The petitioner was a third party using a public road. He had no role in determining the allocation of statutory powers between the BBMP and the school. Nor did he have any control over the requirement that permission be obtained before the branch could be removed.

22.44. If the BBMP considers that respondent No.4 bears any responsibility which gives rise to a right of contribution or recovery, it is open to the BBMP to work out such claim in appropriate proceedings, in accordance with law. No final opinion is expressed on the merits or quantum of any such inter se claim. The existence of such a dispute cannot, however, postpone or diminish the relief payable to the petitioner.

22.45. The BBMP has relied upon the permission stated to have been granted on 07.03.2024 as evidence that the complaint had been acted upon. The fact that such an order bears the date 07.03.2024, however, does not by itself establish the time at which the order was passed or the stage at which the statutory process had actually reached before the accident.

22.46. The accident occurred at about 10.00 a.m. on 07.03.2024. The permission is also shown as having been granted on 07.03.2024. The ordinary working hours of Government offices are also relevant while examining the chronology. In the absence of any time recorded on the permission itself, this Court is unable to ascertain whether the order was passed before the accident at 10.00 a.m., or thereafter.

22.47. This is not a matter on which the Court can proceed on assumption. If the BBMP seeks to rely upon the order dated 07.03.2024 as proof that it had taken effective action before the accident, it was necessary for the BBMP to establish when that order came into existence and when it was communicated or made available for implementation.

22.48. The possibility that the order may have been generated or passed after the accident cannot, on the material presently available, be completely ruled out. This Court is not recording a finding that the order was created after the accident. Such a finding would require evidence. What is material is that the present record does not disclose sufficient information to determine the chronology with certainty.

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22.49. A date alone is insufficient for this purpose. Where the date of an administrative order coincides with the date of an accident which occurred earlier in the day, the order ought, particularly in the present digital environment, to carry or be supported by an ascertainable date and time stamp. The electronic record should disclose, as applicable, the time at which the order was generated, the time at identity of the officer who approved or signed it, and the time at which it was communicated or made available to the concerned officer or applicant.

22.50. Such information would have enabled the Court to determine whether the statutory permission was actually granted before the accident and whether any action pursuant to that permission could reasonably have been taken before the branch fell.

22.51. The absence of such a time-stamped record assumes greater significance because the BBMP received the complaint on 22.02.2024, had actual knowledge of the danger for thirteen days, and the branch fell at about 10.00 a.m. on 07.03.2024. If the permission was in fact granted only after 10.00 a.m., it could not have afforded any protection to the petitioner or prevented the accident which had already occurred.

22.52. Even if the permission had been granted before 10.00 a.m., the BBMP would still have to establish what action, if any, was taken pursuant to the permission before the branch fell. Grant of permission and removal of the dangerous branch are two different stages. A permission which remained uncommunicated or unacted upon could not, by itself, remove the danger.

22.53. The Court therefore cannot treat the mere existence of an order dated 07.03.2024 as conclusive proof that the BBMP had discharged its duty before the accident.

22.54. This also highlights a larger administrative requirement. Where Government departments and statutory authorities now conduct their functions substantially through electronic systems, the records relating to decisions affecting public safety ought to be capable of being independently verified. Orders concerning dangerous trees, demolition, public safety, road obstructions and similar matters should, wherever the system permits, contain or preserve an immutable date and time stamp showing the relevant stages of processing and decision-making.

22.55. Such a requirement is not intended to impose an additional substantive condition upon the exercise of statutory power. It is a matter of record integrity, transparency and auditability. It protects the authority as much as it protects a citizen. If an order is genuinely passed before an incident, the time-stamped electronic record will establish that fact. If it is passed thereafter, the same record will make the chronology clear.

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22.56. In the present case, however, the absence of such time-specific information leaves an important part of the chronology unresolved. The Court must consequently examine the liability of the BBMP on the basis of the established facts, namely that the BBMP received actual notice of the dangerous branch on 22.02.2024, that the dangerous branch remained in place, and that the petitioner was injured when it fell at about 10.00 a.m. on 07.03.2024.

22.57. The order dated 07.03.2024, without a reliable indication of the time at which it was passed and without evidence of any action pursuant to it before 10.00 a.m., cannot be relied upon to conclude that the danger had been effectively addressed before the accident. It is for the purpose of this Judgment presumed that the order was passed on 07.03.2024. Such presumption will not come in the way of the school establishing to the contrary if any proceedings are filed by the BBMP against the School.

22.58. For the reasons stated above, this Court answers point No.(v) as follows:

22.58.1. The fact that the tree stood within the premises of respondent No.4 does not absolve the BBMP of the statutory/public responsibility which arose after it received actual notice of the dangerous branch.

22.58.2. The school, as owner or occupier of the premises, had a duty to take reasonable precautions within the area under its control after becoming aware of the danger. It also had a duty to bring the danger to the notice of the competent authority.

22.58.3. The school became aware of the danger at least by 16.02.2024, prepared its letter on that date, but submitted it to the BBMP only on 22.02.2024. Since there is no material establishing an earlier date of knowledge, the Court cannot attribute to the school any earlier delay. Nevertheless, the period between 16.02.2024 and 22.02.2024 is a relevant circumstance, particularly having regard to the school's own description of the branch as "very dangerous" and as one which "could break anytime".

22.58.4. The school could have submitted the letter earlier and could also have taken reasonable temporary precautions within its premises. The possibility that earlier submission might have enabled earlier removal of the branch is a relevant consideration. However, there is insufficient material to conclude that the school thereby became a proximate cause of the petitioner's injury on the public road.

22.58.5. The BBMP received actual notice on 22.02.2024, had the statutory power to act upon the complaint and ultimately granted permission on 07.03.2024. No effective interim protective measure is shown to have been taken in the intervening period.

22.58.6. The very branch identified in the complaint fell on 07.03.2024 and struck the petitioner while he was using the public road. The more immediate and proximate

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causal connection with the injury is consequently the failure of the BBMP to take effective action after receiving actual notice of the specific danger.

22.58.7. There is no contributory negligence on the part of the petitioner. Any question of contribution or apportionment arises only between the respondents.

22.58.8. On the material before this Court, the school's lapse does not warrant fastening a separate proportion of the compensation upon respondent No.4. The primary and predominant responsibility for the compensation payable to the petitioner rests with the BBMP, respondent Nos.2 and 3.

22.58.9. The undertaking given by respondent No.4 regarding the education of the petitioner's daughter shall be honoured. The payment of Rs.3,00,000/- and the undertaking shall be considered while determining the consequential relief under Points No.(viii) and (x).

22.58.10. Any inter se claim which the BBMP may have against respondent No.4 for contribution or recovery is left open to be worked out in appropriate proceedings, in accordance with law. No final opinion is expressed on that question.

22.59. The fact that the tree stood on private property is thus relevant to determining the respective duties of the school and the BBMP, but it is not a ground to absolve the BBMP of liability arising from its own statutory/public duty after receipt of actual notice.

23. **Answer to Point No. (vi): Whether the occurrence can be attributed to an act of God/natural event so as to exclude or limit the liability of the BBMP?**

23.1. Learned counsel for the petitioner submitted that the plea of act of God or vis major is not available to the BBMP in the facts of the present case. Both the school and the BBMP had been informed, before 07.03.2024, that the branch was dangerous and "could break anytime". The danger which ultimately materialised was, therefore, not an unforeseen danger.

23.2. It was submitted that a plea of act of God proceeds on the basis that the occurrence was one which could not reasonably have been foreseen or guarded against. Once the very danger has been identified and reported in writing, the subsequent occurrence cannot, merely because it happened suddenly, be treated as an unforeseen natural event.

23.3. Learned counsel relied upon paragraph 13 of **Sushila Devi**, and submitted that the Hon'ble Supreme Court had specifically noticed the absence of a plea that the fall had been caused by vis major or an act of God. According to learned counsel, even if such a defence is available in law, it cannot succeed where the dangerous condition which resulted in the injury was known in advance.

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23.4. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3, submitted that the falling of a tree or branch is inherently a sudden event and may occur due to natural causes. He submitted that such an occurrence may constitute an act of God or fall within the doctrine of vis major, particularly where there is no proof of wilful negligence or conscious disregard on the part of the BBMP.

23.5. Reliance was placed on the decision of the Hon'ble Jammu and Kashmir and Ladakh High Court in **Khazir Mohammad Ganai & Ors. v. State of J & K & Ors.,** [OWP No.939/2012], particularly paragraph 12, for the proposition that the falling of roadside trees due to natural causes does not, by itself, attract liability where the fall is attributable to a windstorm and negligence is not established against the concerned authority.

23.6. The expression act of God cannot be applied merely because the immediate physical cause of an accident is a natural event. Trees and branches fall because of natural forces and physical processes. The fact that a branch breaks suddenly does not, by itself, make every such occurrence an act of God.

23.7. The relevant question is whether the occurrence was so extraordinary and unforeseeable that it could not reasonably have been anticipated or guarded against by a person or authority having the duty to do so.

23.8. The decision in **Khazir Mohammad Ganai**., relied upon by the BBMP, has to be understood in that context. The relevant finding in paragraph 12 was:

> “The trees which were growing on the side of the road are not in non natural use of the land or an hazardous activity to attract the principle of strict liability. The wind storm was an act of nature and negligence is not attributable to the respondents.”

23.9. The factual setting in that case is important. The Court was considering a specific natural event, namely, a windstorm, and concluded that negligence could not be attributed to the respondents. The decision cannot be understood as laying down a general rule that every falling tree or branch is an act of God merely because the immediate cause of its fall is natural.

23.10. There is a further distinction which is material to the present case. A natural event may be unexpected even though the possibility of a tree or branch falling is generally known. The question is whether the particular danger which materialised could reasonably have been anticipated. Here, there was a specific warning concerning the particular branch which subsequently fell.

23.11. The school became aware of the dangerous condition on 16.02.2024. On that date, it prepared a written complaint stating that a thick branch of the Gulmohar tree was projecting over the road, that it "could break anytime", and that it was "very

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dangerous" to school children, residents and vehicles. The complaint was submitted to the BBMP on 22.02.2024. From that date, the BBMP had actual notice of the particular danger. The BBMP thereafter processed the complaint and granted permission to prune the branch on 07.03.2024. On that very day, before the identified danger could be removed, the branch fell and struck the petitioner.

23.12. This chronology assumes significance while considering the plea of act of God. The Court is not dealing with a case where an apparently safe tree suddenly fell without any prior warning or information concerning its condition. The particular branch had been identified, its projection over the public road had been brought to the notice of the authority, and its possible fall had been expressly warned about.

23.13. The Hon'ble Supreme Court in **Sushila Devi** (supra) in paragraph 13, observed:

> “It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable.”

23.14. The very same paragraph was extracted with approval by the Hon'ble Division Bench of the Hon’ble Madras High Court in **K. Karthik** at paragraph 31.

23.15. The observation is relevant for another reason. Where an authority seeks to rely upon an extraordinary natural event as a defence to a claim founded upon negligence or breach of duty, there must be some factual basis for the defence. The mere use of the expression act of God cannot substitute for proof of the natural event said to have caused the accident.

23.16. In the present case, the BBMP has not placed any material before this Court to show that the branch fell because of a storm, cyclone, lightning, extraordinary rainfall or any other exceptional natural phenomenon on 07.03.2024.

23.17. The incident occurred at about 10.00 a.m. while the petitioner was travelling along the public road. There is no material before this Court to indicate that the weather conditions at the relevant time were such as to constitute an extraordinary natural event. The BBMP has also not identified any particular natural occurrence which rendered the fall of the branch unavoidable despite reasonable precautions.

23.18. The definition of Act of God considered by the Hon’ble Division Bench of the Hon'ble Madras High Court in **K. Karthik** (paragraph 37) is also instructive:

> “'Act of God' means, an unexpected occurrence of nature, such as severe gale, snowstorms, hurricanes, cyclones and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. 'Act of God' provides no excuse, unless so it is unexpected that no reasonable human foresight would be

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> presumed to anticipate the occurrence having regard to the conditions of time and place known to be prevailing at. … It should be a direct violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted."

23.19. The emphasis in this passage is on unexpectedness, foreseeability and the ability to guard against the occurrence. It does not mean that a natural force must be entirely absent before liability can arise. Nor does it mean that every sudden fall of a tree is necessarily an act of God.

23.20. The question, therefore, is whether the risk which materialised was one which reasonable human foresight could have anticipated and reasonable care could have guarded against. In the present case, the answer is in the affirmative.

23.21. The risk of the branch falling was specifically identified before the incident. The school had stated in writing that it "could break anytime". The BBMP received that information on 22.02.2024. The BBMP consequently knew, before the incident, that there was a particular branch projecting over a public road which had been identified as dangerous and capable of falling.

23.22. The subsequent fall of the branch was sudden. But the suddenness of the fall is not the same thing as the unforeseeability of the risk of the fall. This distinction is central.

23.23. A branch may fall suddenly. A person standing or travelling beneath it may have no opportunity to react after the branch begins to fall. But where the authority responsible for dealing with the danger has already been informed that the branch is dangerous and may break, the fact that the final breaking occurs suddenly does not, by itself, make the event an act of God.

23.24. The same distinction is reflected in **Manjulben Jayantilal Nakum** (paragraphs 15, 18 and 56). While considering the liability of a local authority in cases involving falling trees, the Hon'ble Supreme Court recognised that a sudden fall, in circumstances where the dangerous condition could not reasonably have been anticipated, may result in the causation being too remote. At the same time, in paragraph 62 the Hon'ble Supreme Court considered a different situation where:

> "Take for instance, where a hanging branch of a tree/tree is gradually falling on the ground. The statutory/local authority fails to take timely action to have it cut and removed and one of the passersby dies when the branch/tree falls on him. Though the injured or the deceased has contributed to the negligence for the injury or death, the local authority etc. is equally liable for its negligence/omission in the performance of the duty because the proximity is

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anticipated. … The defect is apparent. Negligence is obvious, proximity and neighbourhood anticipated and lack of duty of care stands established."

23.25. The present case is closer to the latter situation. This Court is not required to determine whether some natural force was physically involved in causing the branch to break. It is entirely possible that natural processes contributed to the breaking of the branch. But that is not the determinative question.

23.26. The relevant question is whether the natural process was so extraordinary and irresistible that the danger could not reasonably have been anticipated or prevented. There is no evidence of such an extraordinary event. On the contrary, the evidence establishes prior knowledge of the danger. This also explains why the plea of force majeure does not assist the BBMP. The expression cannot be used merely to describe an event which happened suddenly. There must be an external event of such a nature that it could not reasonably have been anticipated or guarded against. No such event has been established here.

23.27. This Court is conscious that the mere fact that a tree or branch falls does not, by itself, establish negligence. A public authority cannot be treated as an insurer against every natural occurrence involving trees. This principle was also recognised in **Manjulben Jayantilal Nakum** (paragraph 57). There may be cases where a healthy tree, without any apparent defect or warning, falls suddenly because of an extraordinary natural event. In such a case, depending upon the facts, the occurrence may be beyond reasonable human foresight and the authority may not be liable. That, however, is not the case here.

23.28. The BBMP had actual notice of a specific danger. The danger had been described in writing in clear terms. It concerned a branch projecting over a public road. The BBMP had statutory power to consider and act upon the complaint. The permission to prune was ultimately granted on 07.03.2024, demonstrating that the complaint had been acted upon, but by then the branch had already fallen.

23.29. The intervening period is therefore not irrelevant. As held while answering Point No.(iv), the issue is not whether the BBMP could physically prevent the branch from falling after it had begun to break. The issue is whether, after receiving actual notice of the danger, it ought reasonably to have taken steps to remove the danger or, pending such removal, take suitable protective measures.

23.30. The fact that the school itself submitted the complaint only on 22.02.2024, although it had become aware of the danger on 16.02.2024, has been considered under Point No.(v). That delay is a relevant circumstance while determining the respective responsibilities of the school and the BBMP. It does not, however, restore the element of unforeseeability in favour of the BBMP after the complaint had actually been received. From 22.02.2024 onwards, the BBMP cannot contend that it was

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unaware of the risk. It is also necessary to distinguish between the cause of the fall and the cause of the injury.

23.31. Even if a natural force contributed to the physical breaking of the branch, the injury to the petitioner resulted from the fall of a branch whose dangerous condition had already been brought to the notice of the authority. The existence of a natural force does not automatically sever the chain of causation where reasonable precautions could have been taken after the danger became known. Put differently, the law does not require the Court to choose between two mutually exclusive explanations, either the branch fell because of nature or it fell because of negligence. A natural process may cause a branch to fall, while the failure to address a known danger may nevertheless constitute negligence in law.

23.32. The distinction may be stated simply:

23.32.1. where a tree or branch, whose dangerous condition was not known and could not reasonably have been known, suddenly falls because of an extraordinary natural event, the defence of act of God may be available, depending upon the facts; and

23.32.2. where the dangerous condition of the particular tree or branch has been identified and brought to the notice of the authority, the subsequent fall of that branch cannot, merely because it occurred suddenly or involved natural forces, be treated as an unforeseen event so as to defeat liability for failure to address the known danger.

23.33. The present case falls within the second category.

23.34. There is one further aspect which requires to be considered. The plea of act of God cannot be used to erase the statutory duty which arose upon receipt of actual notice. Once the BBMP was informed of the dangerous branch, its duty had to be discharged with reference to the nature of the warning received. The fact that the branch was located within private premises did not make the danger irrelevant when the branch projected over a public road. Equally, the fact that the school was required to obtain permission did not make the danger one which the BBMP was entitled to ignore until the branch actually fell.

23.35. This Court is, therefore, not holding that every natural event involving a tree will result in liability of the BBMP. The finding is confined to the facts of this case: a specific dangerous branch was identified, the danger was communicated in writing, the BBMP received actual notice, no extraordinary natural event has been established as the cause of the fall, and the very danger which had been reported subsequently materialised.

23.36. In such circumstances, the suddenness of the physical event does not make it an act of God in a manner which excludes or limits the liability otherwise arising from

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the BBMP's failure to discharge its statutory/public duty.

23.37. For the aforesaid reasons, this Court finds that the plea of act of God, vis major or force majeure cannot be accepted. There is no material to establish that an extraordinary natural event such as a severe storm, cyclone, lightning or extraordinary rainfall caused the branch to fall. More importantly, the risk posed by the particular branch had already been identified and reported before the incident. The branch may have fallen suddenly, but the risk of its falling was not unforeseen. Accordingly, the occurrence cannot be attributed to an act of God or other extraordinary natural event so as to exclude or limit the liability of the BBMP.

23.38. This Court answers point No. (vi) by holding that the occurrence cannot be attributed to an act of God/natural event so as to exclude or limit the liability of the BBMP.

24. **Answer to Point No. (vii): Whether the disputed questions relating to negligence, causation, notice, compliance with the applicable statutory provisions/SOP and apportionment of liability can appropriately be adjudicated in the present proceedings under Article 226 of the Constitution?**

24.1. Learned counsel for the petitioner submitted that this Court need not, and ought not, drive the petitioner to a civil suit, since the material facts necessary for deciding the liability are already available on record and are, in substance, not disputed. He referred to the school's letter, the BBMP's admission regarding receipt of the said letter and the date on which permission to prune was granted, the medical records and the disability certificate. According to him, what remains is principally an assessment of the legal consequences flowing from these undisputed facts.

24.2. He relied on the decision of the Hon'ble Division Bench of this Court in **Union of India rep by its Secretary, Ministry of Defence and others vs. Government of Karnataka rep by its Chief Secretary and others** [2024 SCC Online Kar 1991], particularly paragraphs 5.3 and 5.4, for the proposition that the existence of an alternative remedy is a matter of discretion for the High Court and does not operate as an absolute bar to the exercise of writ jurisdiction, particularly where the essential facts are not seriously in dispute.

24.3. He also relied on the decision of the Hon'ble Supreme Court in **Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd., vs. M.P. Road Development Corporation and** another [Civil Appeal No.9920/2025], and paragraph 8.4 thereof, to submit that the right to a safe public road is an aspect of the right to life under Article 21 of the Constitution and that the claim, therefore, has a clear public law element.

24.4. Learned counsel further relied on **K. Karthik** (paragraph 43), submitting that the Hon'ble Division Bench of the Madras High Court in that case had upheld an award of

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compensation in writ proceedings arising from a tree-fall death, notwithstanding an objection that the matter involved disputed questions of fact.

24.5. As regards the objection relating to the insurance amount, learned counsel submitted, in rejoinder, that there was no deliberate suppression. The amount received from the insurer was only a part payment towards the expenses incurred and, once the issue was pointed out, the amount was disclosed and taken into account. He submitted that, even assuming that the amount was not specifically mentioned when the petition was filed, the appropriate course would only be to deduct the amount actually received from the compensation or medical expenses claimed. According to him, that adjustment has already been made in the petitioner's computation.

24.6. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3, submitted that this Court, while exercising its extraordinary jurisdiction, cannot assume the role of a Civil Court and assess damages when liability itself is disputed and evidence would be required to determine negligence, causation and quantum. He relied on the decision of the Hon'ble Jammu and Kashmir and Ladakh High Court in **Khazir Mohammad Ganai, particularly paragraph 13 thereof, and submitted that questions as to whether there was a windstorm, whether the tree was properly maintained and whether there was negligence are disputed questions of fact which can properly be established only by leading evidence in a civil suit.**

24.7. He further submitted that the liability of the BBMP is also required to be considered in C.C. No.61833/2024 and that it would be inappropriate for this Court, in the present proceedings, to pre-empt the determination in the criminal case.

24.8. Sri Lakshmish G., learned counsel for respondent No.4, submitted that the medical bills produced by the petitioner would have to "stand the test of cross-examination" and that a trial would consequently be necessary before the quantum claimed by the petitioner could be accepted. He further submitted that the petitioner had suppressed, at the time of filing the writ petition, the fact that he had already received an amount from his insurer and that such suppression, in his submission, disentitled the petitioner from claiming relief under Article 226 of the Constitution.

24.9. The objection raised by the respondents has to be examined in the proper perspective. The mere fact that a claim involves negligence, causation or compensation does not, by itself, make the matter incapable of being considered under Article 226. At the same time, a Writ Court ought not to undertake a detailed trial where the material facts are genuinely disputed and can be established only by oral evidence.

24.10. The question, therefore, is not merely whether the claim is one which could also be brought before a Civil Court. The more relevant question is whether the facts which are necessary to determine the liability are genuinely disputed and whether

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their determination requires a trial involving examination and cross-examination of witnesses.

24.11. The real contest on this aspect is between two lines of authority relied upon by the parties. On the one hand is **K. Karthik** (paragraph 43), where the Hon'ble Madras High Court upheld an award of compensation under writ jurisdiction notwithstanding an objection based on disputed questions of fact. On the other is **Khazir Mohammad Ganai** (paragraph 13), where the Hon'ble Jammu and Kashmir and Ladakh High Court declined to entertain the claim because the material facts relied upon to establish negligence were themselves disputed.

24.12. It is significant that **K. Karthik** is relied upon by both sides. The petitioner relies on the decision ultimately rendered, whereas the BBMP relies upon the objection raised in that case regarding disputed questions of fact. It is, therefore, necessary to examine how that very objection was dealt with by the Division Bench. The objection recorded in **K. Karthik** (paragraph 15) was:

> "…since the issue relates to a question of fact, and subject matter has to be decided, after a full trial, before the court of civil jurisdiction, after examination of witnesses, and without examining any evidence, the vital aspects of negligence and liability or even a no fault liability cannot be arrived at, in writ jurisdiction."

24.13. The Hon'ble Division Bench in paragraphs 39 and 40, rejected the objection after examining the material placed before it. The Corporation had a statutory duty under Section 259 of the Chennai City Municipal Corporation Act, 1919. Its failure to enumerate dangerous trees before the accident was admitted, and its subsequent conduct in cutting down 877 trees found to be dangerous immediately after the accident was also relevant. These circumstances, taken together, disclosed negligence "on the face of it", and the Division Bench found that a trial was not necessary merely to establish those facts.

24.14. The principle which emerges is of importance. The decisive consideration is not the label attached to the proceeding, nor the fact that a claim is founded on tortious principles. The Court has to see whether the particular facts necessary to establish the alleged breach are genuinely disputed or whether they stand established by documents, admissions and other material which is not seriously challenged. The same approach is applicable here.

24.15. The BBMP does not dispute receipt of the school's letter dated 16.02.2024. It does not dispute that the letter described the branch as one that could break at any time. It does not dispute that permission to prune was granted on 07.03.2024. It also does not dispute that the branch fell on that very day and caused the petitioner to suffer injuries.

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24.16. The principal dispute raised by the BBMP is whether the period between receipt of the complaint and the incident can be characterised as an unreasonable delay and whether such delay amounts to negligence or breach of statutory duty. That is a question to be determined from the documents, the applicable statutory provisions and the SOP, and does not necessarily require oral evidence.

24.17. There is, however, one aspect which requires some care. The fact that the primary events are not disputed does not mean that every issue arising from those events is automatically concluded. This Court must still examine whether the BBMP had a duty to act, the nature and urgency of that duty, whether the steps taken were sufficient in the circumstances, and whether the omission, if any, had a proximate connection with the injury. Those are questions of law and legal inference which can be decided on the material already available on record.

24.18. The further observation of the Hon'ble Division Bench in **K. Karthik** (paragraph 39) made while rejecting the very objection raised before it, is also relevant:

> "When there is a failure on the part of the Corporation to discharge its statutory duties, it is not open to them to contend that the second respondent, who lost his parents at the young age, on account of such failure, to move the civil court, when courts have already held that the victim is entitled to public law remedy."

24.19. The above observation cannot be read as laying down that every claim for compensation against a public authority must necessarily be decided in writ jurisdiction. The Court must still be satisfied that the case is one in which the public law remedy is appropriate and that the material facts necessary for such determination are available. But once a statutory duty, prior notice, failure to act and the resulting injury can be considered on the material before the Court, the existence of a civil remedy does not, by itself, require the victim to be relegated to a civil suit.

24.20. In the present case, this Court has, while answering Points No.(ii) to (iv), found that the BBMP had a statutory and public duty in relation to the dangerous branch, that it had actual notice of the danger before the incident and that the response to that notice was not commensurate with the urgency disclosed in the complaint. The petitioner is not asking this Court to determine an issue for which the material facts are wholly unavailable. The essential chronology and the relevant documents are already before the Court.

24.21. **Khazir Mohammad Ganai** does not alter this conclusion. The decision is distinguishable on the nature of the factual dispute involved there. The occurrence of a windstorm and the general condition and maintenance of the roadside trees were themselves matters requiring evidence. There was no admitted written notice identifying a particular dangerous tree or branch and bringing the danger to the attention of the authority before the incident.

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24.22. The position here is materially different. The existence of the warning, its contents, its receipt by the BBMP, the date of permission and the date of the incident are all matters supported by documentary material. The Court is not required to decide, on conflicting oral testimony, whether the warning was ever given. It is required to determine the legal consequence of a warning which the BBMP admittedly received.

24.23. The same reasoning applies to the submission of Sri Lakshmish G. that the medical bills would need to "stand the test of cross-examination". A medical bill does not become a disputed document merely because counsel submits that it could be subjected to cross-examination. If the genuineness of a particular bill, the treatment covered by it or its connection with the injuries is specifically disputed, the Court may have to consider whether evidence is necessary. No such specific challenge has been demonstrated merely by the submission that the bills should "stand the test of crossexamination".

24.24. Further, as noticed while answering Point No.(i), both the school and the BBMP have made payments to the petitioner following the incident. Those payments do not, by themselves, constitute an admission of legal liability. They are, however, part of the factual background and demonstrate that the occurrence and the fact that the petitioner suffered substantial injury are not matters resting solely on his uncorroborated assertion.

24.25. This Court must also consider the pendency of C.C. No.61833/2024. The said proceeding arises from the registration of a criminal case under Section 338 of the Indian Penal Code, 1860. The issue in that proceeding is one of criminal rashness or negligence and criminal culpability. The present proceeding is concerned with the public law responsibility of the BBMP and the consequential claim for compensation.

24.26. The two proceedings consequently operate in different fields. The standard applicable to criminal culpability is not the standard applicable to determining public law liability for breach of a statutory duty. A finding in the present proceeding does not determine the guilt or innocence of any person in the criminal case, nor does the pendency of the criminal case prevent this Court from examining the independent public law obligation of the BBMP. The mere pendency of the criminal case, therefore, cannot be treated as a bar to the present proceedings.

24.27. This Court also finds it necessary to consider the objection of respondent No.4 that the petitioner suppressed the receipt of insurance money and is, on that ground, disentitled to relief. Suppression of a material fact from a Writ Court, if established, can certainly be a ground for declining relief. A person invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution is expected to make a full and fair disclosure of material facts. The doctrine, however, is directed against

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deliberate or material concealment and not every omission, irrespective of its nature or effect.

24.28. The material on record does not warrant the conclusion that there was such suppression in the present case. It is not disputed that the amount received from the insurer, being Rs.2,37,806/-, was disclosed once the matter was pointed out. More importantly, the amount has been factored into and deducted from the medical expenses claimed by the petitioner. There is, therefore, no basis to conclude that the petitioner is seeking to recover twice over the amount already received from the insurer.

24.29. The total medical bills are stated to be Rs.26,82,077.75, against which the insurance recovery of Rs.2,37,806/- is a relatively small component. There is no material to show that the omission to mention the insurance amount at the initial stage was a deliberate attempt to mislead the Court or that it affected the Court's decision to entertain the petition.

24.30. The objection based on suppression is accordingly rejected. At the same time, the amount actually received from the insurer shall necessarily be given due credit while determining the final compensation, so that the petitioner does not receive double recovery. The adjustment directed while answering Point No.(ix) will adequately safeguard against such duplication.

24.31. This Court also finds support, on the question of alternative remedy, from the decision of the Hon'ble Division Bench of this Court in **Union of India rep by its Secretary, Ministry of Defence and others vs. Government of Karnataka rep by its Chief Secretary and others** (paragraph 5.4). Though that decision arose in the context of the National Green Tribunal Act, 2010, the Hon'ble Division Bench reiterated the general principle governing the exercise of writ jurisdiction in the presence of an alternative remedy:

> "It was stated that certain contingencies such as where the petitioner seek to enforce the fundamental rights, where there is failure to comply with the principles of natural justice or where the orders of proceedings are without jurisdiction or that the vires of the Act is challenged, the availability of the alternative remedy is not to be pleaded as a bar."

24.32. The alternative remedy considered in that decision was recourse to the National Green Tribunal under Section 22 of the National Green Tribunal Act, 2010. The remedy suggested by the respondents here is a civil suit for damages. The two remedies are not identical and the decision cannot be read as treating them as such. The relevant principle, however, is that the existence of an alternative remedy ordinarily concerns the exercise of the Court's discretion and does not by itself oust the jurisdiction of the High Court under Article 226. The question remains whether, having regard to the

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nature of the right asserted, the conduct of the public authority and the availability of the necessary material, the writ remedy is appropriate. That consideration assumes particular significance where the claim concerns the right to life and personal security.

24.33. In **Umri Pooph Pratappur** (paragraph 8.4), the Hon'ble Supreme Court recognised the connection between road safety and Article 21:

> "…the right to safe, well-maintained, and motorable roads is recognised as a part of the right to life under Article 21 of the Constitution of India, … it is the responsibility of the State to develop and maintain the roads directly under its control."

24.34. The principle is relevant here not because the BBMP owns every property adjoining a public road, but because the safety of persons using a public road falls within the sphere of public responsibility. Where a dangerous condition extending over or affecting a public road is specifically brought to the notice of the authority having statutory responsibility to deal with it, the failure of that authority to take appropriate action may give rise to a public law consequence.

24.35. A public road which is rendered unsafe by a branch overhanging it from an adjoining property, where the authority responsible for public safety has been specifically informed of the danger and has failed to take appropriate action, is therefore not a matter which can be characterised merely as a private dispute between the owner of the property and the person who suffered the injury.

24.36. This Court is also conscious that apportionment of liability between the BBMP and the school, and the precise quantum of compensation, may in some cases involve a more detailed factual inquiry. However, the mere possibility that a Civil Court could undertake a more extensive inquiry does not mean that the Writ Court is incapable of granting relief where the principal facts necessary to establish public law liability are already available.

24.37. In the present case, the issue of apportionment has been considered separately under Point No.(v). The finding there is not based on an assumption that ownership of the tree alone makes the school liable, nor does it treat the BBMP as an insurer against every tree fall. The respective duties of the school and the BBMP have been examined in the light of the notice, the statutory framework, the nature of the danger and the steps, or absence of steps, taken before the incident. Likewise, the Court is not required at this stage to accept every amount claimed by the petitioner merely because medical bills have been produced. The quantum is to be determined on the basis of the material available and the principles applicable to compensation, with appropriate adjustment for amounts already received. A civil suit is not made necessary merely because the respondents suggest that the quantum could have been examined through crossexamination.

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24.38. The Court must also bear in mind that the remedy under Article 226 is discretionary. The fact that this Court has jurisdiction to consider the claim does not mean that such jurisdiction must be exercised in every case. The present case is one in which the relevant public authority had statutory responsibility, received specific notice of a danger affecting users of a public road, and the material necessary to examine its response is contained in the record. The injury is also established by contemporaneous medical records and the disability material placed before the Court.

24.39. For these reasons, this Court is of the view that the disputed questions projected by the respondents are not of such a nature as to require a full civil trial. The primary facts necessary for deciding notice, the existence of the dangerous branch, the response of the BBMP, the occurrence of the accident and the resulting injury are established by the material on record. What remains is principally the legal assessment of whether the admitted conduct amounted to a breach of statutory/public duty and whether that breach had a proximate connection with the injury.

24.40. The fact that C.C. No.61833/2024 is pending does not alter this position. Nor does the availability of a civil remedy require the petitioner to pursue that remedy as a condition precedent to invoking Article 226 in the circumstances of the present case.

24.41. The conclusion reached by this Court is also consistent with the observation of the Hon'ble Division Bench of the Madras High Court in **K. Karthik** (paragraph 43), relied upon by the petitioner, that once prima facie negligence arising from failure to discharge a statutory duty is made out, resulting in a tort, a writ of mandamus can properly be issued to compel the authority concerned to pay compensation to the victim.

24.42. This Court, however, makes it clear that the present finding is confined to the exercise of public law jurisdiction on the material available in this case. It does not prevent a party from pursuing such other remedy as may be available in law in respect of matters which are not decided by this Court.

24.43. For the reasons stated above, the questions arising in this writ petition can appropriately be adjudicated under Article 226 of the Constitution. Neither the existence of a civil remedy, nor the pendency of C.C. No.61833/2024, nor the objection based on the insurance amount, which has been rejected for the reasons recorded above, constitutes a bar to consideration of the petition.

24.44. This Court answers Point No. (vii) by holding that in the present case the alleged disputed questions relating to negligence, causation, notice, compliance with the applicable statutory provisions/SOP and apportionment of liability can appropriately be adjudicated in the present proceedings under Article 226 of the Constitution.

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25. **Answer to Point No. (viii): Whether the petitioner is entitled to compensation in exercise of the public law jurisdiction of this Court and, if so, from which of the respondents and to what extent?**

25.1. Learned counsel for the petitioner submitted that the compensation computed by the petitioner ought to be directed to be paid by the BBMP, with liberty reserved to the BBMP to work out its contribution, if any, from the school having regard to any contributory negligence that may be established against it. He submitted that respondent No.1-State of Karnataka has been impleaded only in its capacity as the department administratively overseeing local bodies and that, if the BBMP is directed to satisfy the compensation, no separate monetary liability need be imposed upon respondent No.1.

25.2. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3, submitted that no liability ought to be fastened upon the BBMP. He further submitted that the payment of Rs.5,00,000/- made by the BBMP was an exgratia payment and cannot be treated as an admission of negligence or legal liability.

25.3. Sri Lakshmish G., learned counsel for respondent No.4, submitted that the school had acted diligently by bringing the dangerous condition to the notice of the BBMP and, therefore, no liability ought to be imposed upon the school. He reiterated, however, that the school would stand by the voluntary commitments already made, namely, the payment of Rs.3,00,000/- to the petitioner and the provision of free education to the petitioner's daughter until completion of the 12th standard.

25.4. The question whether the petitioner is entitled to compensation has to be considered separately from the question of the exact amount payable. The findings recorded on Points No.(i) to (vii) provide the necessary foundation for considering the grant of compensation in exercise of the public law jurisdiction of this Court.

25.5. The petitioner suffered a serious and permanent injury. The BBMP owed a statutory and public duty in relation to the dangerous branch which had extended over the public road. The danger had been specifically brought to the notice of the BBMP before the incident. The BBMP had actual notice of the danger and, despite such notice, failed to take timely and effective steps commensurate with the warning received. Such failure has been found to have a proximate connection with the injury suffered by the petitioner. The plea that the occurrence was an act of God has also been rejected. Likewise, the objection that the dispute could not appropriately be considered in writ jurisdiction has been rejected.

25.6. The present case, therefore, is not one in which compensation is being claimed merely because an unfortunate accident occurred. The basis of the claim is the failure of a public authority, after receiving specific notice of a dangerous condition affecting a public road, to discharge the statutory and public duty cast upon it to take appropriate

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steps for protection of persons using that road. The injury suffered by the petitioner is the consequence of that failure. In these circumstances, the petitioner is entitled to invoke the public law jurisdiction of this Court under Article 226 of the Constitution and seek compensation for the violation of his right to life and bodily integrity.

25.7. The next question is from whom such compensation should be recovered. This requires the respective duties and conduct of the respondents to be considered separately.

25.8. This Court has already found under Point No.(v) that the primary and predominant responsibility for the failure which resulted in the petitioner's injury rests with the BBMP. The fact that the tree stood within the school premises does not, by itself, make the school solely responsible. At the same time, the fact that the school could not lawfully remove or prune the branch without the permission of the BBMP does not completely answer the question of the school's own responsibility.

25.9. The school became aware of the dangerous condition on 16.02.2024. It thereafter communicated the danger to the BBMP, but the communication was actually submitted to the BBMP only on 22.02.2024. The delay between these two dates is a lapse which has already been taken into consideration while answering Point No.(v). The school, having knowledge of the danger, was expected to act with reasonable promptness and to take such precautionary measures as were within its control. However, it could not itself lawfully undertake the necessary pruning or removal without the requisite permission of the BBMP, nor could it exercise control over persons using the public road.

25.10. Once the complaint was received by the BBMP, the position changed materially. The BBMP had actual notice of a specific and identified danger affecting the public road and possessed the statutory power to take appropriate action. The immediate obligation to address that danger, including by taking interim protective measures where necessary, therefore assumed greater significance. It is this failure after receipt of actual notice which constitutes the immediate and proximate default resulting in the petitioner's injury.

25.11. The liability being considered in the present proceedings is consequently not based upon ownership of the tree alone. It arises principally from the failure of the public authority to discharge its statutory and public duty after receiving specific notice of a dangerous condition affecting persons using a public road. The direction for payment of public law compensation must, therefore, operate principally against respondent Nos.2 and 3, representing the BBMP.

25.12. This conclusion does not require this Court to finally determine the inter se liability of the BBMP and the school. If the BBMP considers that the school was also responsible, either wholly or partly, by reason of its knowledge of the danger, the

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delay in communicating the same or any other omission attributable to it, the BBMP would be at liberty to work out its rights against the school in appropriate proceedings in accordance with law. The question of contribution or apportionment between the respondents need not be finally decided for the purpose of granting the petitioner the public law remedy in the present proceedings.

25.13. As regards respondent No.1-State of Karnataka, no material has been placed before this Court to establish any independent act or omission on its part which contributed to the petitioner's injury. The State has been impleaded in its administrative capacity in relation to local bodies. The statutory and operational responsibility which has been found to have been breached in the present case is that of the BBMP. Mere administrative supervision over a local authority, without any independent act or omission contributing to the injury, cannot by itself constitute a sufficient basis for imposing an independent monetary liability upon the State in these proceedings. Consequently, no separate direction for payment of compensation is warranted against respondent No.1. This finding, however, does not take away any supervisory or administrative responsibility which may arise in ensuring compliance with the directions issued by this Court.

25.14. The payment of Rs.5,00,000/- made by the BBMP also requires to be considered in its proper context. The submission that an exgratia payment does not, by itself, amount to an admission of negligence or legal liability is accepted. The entitlement to compensation in the present case is not founded upon the fact that the BBMP made such payment. The liability of the BBMP has been determined independently on the basis of its statutory duty, the actual notice of the dangerous branch, its failure to take timely and effective protective measures and the proximate connection between that failure and the injury suffered by the petitioner.

25.15. At the same time, the amount of Rs.5,00,000/- already paid by the BBMP cannot be ignored while determining the final compensation. The said amount shall be given due credit against the compensation ultimately determined, so that the petitioner does not receive double recovery in respect of the same injury.

25.16. The position regarding respondent No.4-school requires separate consideration. The school had knowledge of the dangerous condition from 16.02.2024 and was under an obligation to take reasonable precautions within the limits of its control and to communicate the danger to the BBMP. It did communicate the danger, though with the delay already noticed. There is no material before this Court to hold that the school had knowledge of the dangerous condition prior to 16.02.2024.

25.17. This Court has also to bear in mind that the dangerous branch extended over the public road. The school could not itself undertake the necessary pruning or removal without BBMP permission and had no control over persons using the road.

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Once the BBMP received the complaint, it was the BBMP which possessed both the statutory authority and the corresponding public duty to deal with the danger. Having regard to these circumstances, the proximate and predominant responsibility for the occurrence rests with the BBMP.

25.18. In these circumstances, this Court does not consider it appropriate to impose any further monetary liability upon respondent No.4 in the present writ proceedings. This conclusion, however, should not be understood as absolving the school of every responsibility arising from its ownership and control of its premises. The school shall remain bound by the voluntary commitments already made by it to the petitioner, namely, the payment of Rs.3,00,000/- already made and the commitment to provide free education to the petitioner's daughter until she completes the 12th standard. These commitments stand on a different footing from the public law compensation now being considered against the BBMP and shall be honoured by the school in full. Any failure to honour those commitments may be dealt with in accordance with law.

25.19. This Court is conscious that the relief under Article 226 is a public law remedy and is not intended to convert every claim for damages into a writ proceeding. Compensation cannot be awarded against a public authority merely because an accident has occurred within its jurisdiction. There must be a demonstrated failure in the discharge of a public or statutory duty, a sufficient connection between that failure and the injury, and circumstances which justify the exercise of the extraordinary jurisdiction of this Court.

25.20. The present case satisfies those requirements. The danger was specifically identified before the incident. The BBMP was placed on actual notice of that danger. The danger affected persons using a public road. The BBMP had statutory powers to address the danger but failed to take effective and timely measures before the branch fell. The resulting injury to the petitioner has been found to have a proximate connection with that failure. The compensation directed in the present case is, therefore, not based upon a general principle that a public authority is liable for every accident occurring within its jurisdiction. It is based upon the particular facts and findings recorded in this case and upon the failure of the BBMP to discharge a public duty after receiving specific notice of an identified danger.

25.21. As regards the words "to what extent" occurring in Point No.(viii), the exact amount of compensation cannot appropriately be determined without examining the individual heads of compensation claimed by the petitioner. Medical expenditure, future treatment and rehabilitation, loss of earning capacity, disability, pain and suffering, attendant and other incidental expenses and such other permissible heads, if any, require separate consideration on the material placed before the Court.

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25.22. The amount of Rs.2,37,806/- received by the petitioner from the insurer and the amount of Rs.5,00,000/- already paid by the BBMP will also have to be appropriately accounted for while determining the final amount of compensation. This is necessary to ensure that the petitioner is fairly compensated for the loss suffered, while at the same time avoiding any double recovery. The question of the amount payable under each head is accordingly considered while answering Point No.(ix).

25.23. It is, therefore, not necessary, while answering Point No.(viii), to finally determine the quantum under each head. The finding at this stage is confined to two matters: first, the petitioner's entitlement to compensation in exercise of the public law jurisdiction of this Court; and second, the respondent against whom the principal monetary direction is to operate.

25.24. For the reasons stated above, this Court answers point No. (viii) by holding that the petitioner is entitled to compensation in exercise of the public law jurisdiction of this Court under Article 226 of the Constitution. The principal liability to satisfy such compensation rests with respondent Nos.2 and 3, representing the BBMP now GBA. No separate monetary liability is imposed upon respondent No.1-State of Karnataka in the absence of any independent act or omission attributable to it. No further monetary liability is imposed upon respondent No.4-school in the present proceedings, having regard to the respective duties of the respondents and the findings recorded under Point No.(v), without affecting the liberty of the BBMP to work out any claim for contribution against the school in appropriate proceedings.

25.25. The voluntary commitments of respondent No.4-school, namely, the payment of Rs.3,00,000/- already made and the provision of free education to the petitioner's daughter until completion of the 12th standard, shall, however, continue to bind the school.

26. **Answer to Point No. (ix): Whether the petitioner is entitled to reimbursement/compensation towards** medical, rehabilitation, physiotherapy and attendant expenses, loss of earning capacity, future medical requirements, pain and suffering, loss of amenities and other consequential losses, and to what extent?

26.1. Learned counsel for the petitioner submitted, relying on **Sushila Devi**, that once the factum of the accident and the legal liability of the authority concerned stand established without the need for further evidence, this Court can, by analogy, apply the principles ordinarily applied for assessment of compensation in motor accident cases. He submitted that **Sushila Devi** itself computed and upheld compensation for a tree-fall death in paragraph 15 by applying a multiplier of 15.

26.2. On that basis, learned counsel placed before this Court a head-wise computation totalling Rs.3,37,99,695/-, comprising

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26.2.1. loss of future earning income of Rs.1,03,85,424/-;

26.2.2. attendant charges of Rs.29,70,000/-;

26.2.3. pain and suffering of Rs.5,00,000/-;

26.2.4. loss of amenities of Rs.5,00,000/-;

26.2.5. food and nourishment of Rs.3,00,000/-;

26.2.6. reimbursement of medical expenses, after deduction of the insurance amount, of Rs.24,44,271/-;

26.2.7. future medical expenses of Rs.1,17,00,000/-; and

26.2.8. educational expenses of Rs.50,00,000/- for his daughter, together with interest at 6% per annum from the date of the incident.

26.3. Learned counsel relied upon the disability certificate assessing 85% disability, but submitted that the petitioner's functional disability ought to be treated as 100%, since he is unable to independently use either his upper or lower limbs. In rejoinder, he withdrew the separate claim of Rs.50,00,000/- towards education in view of the school's undertaking, confining the education claim, if any, to expenses beyond the 12th standard. He also clarified that there was no suppression of the insurance amount and that the amount received from the insurer had already been deducted from the medical expenses claimed.

26.4. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3 relied upon the BBMP guidelines for payment of compensation to road and footpath users injured due to potholes or poor road conditions, which prescribe Rs.3,00,000/- for death and Rs.15,000/- for injury. It was submitted that these guidelines ought to govern the present claim and that the ex-gratia payment of Rs.5,00,000/- already made by the BBMP exceeds the amount prescribed under the guidelines. It was further submitted that the petitioner's claim as a whole amounts to unjust enrichment rather than just compensation.

26.5. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3, alternatively disputed the several heads of claim as excessive and placed before this Court an alternative computation totalling Rs.61,08,591/- before deduction of the ex-gratia amount of Rs.8,00,000/- already paid. He submitted that the disability ought to be taken at the certified 85% and not enhanced to 100%; that the monthly income for computing future loss ought to be taken at Rs.16,500/-, being the figure adopted for Lok Adalat settlements; that loss of income could be awarded only for the period of actual treatment and not thereafter, since the petitioner's employer continued to pay his salary for several months after the incident; that pain and suffering and loss of

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amenities ought to be restricted to Rs.1,00,000/- each; and that incidental and future medical expenses ought to be restricted to Rs.50,000/- each.

26.6. Sri Lakshmish G., learned counsel for respondent No.4, while disputing the liability of the school, made similar submissions regarding quantum. He also relied upon the BBMP guidelines and submitted that even if any liability existed, it could only be to the limited extent contemplated therein. He submitted that the petitioner's continued receipt of salary from his employer for nearly eight months after the incident shows that he has not suffered loss of income and that, since his cognitive faculties remain intact, the claim that he is completely and functionally unemployable is unjustified.

26.7. The object of compensation is to provide just and reasonable recompense for the loss suffered by the injured person. The Court is therefore required to examine each head separately and determine the amount on the material available on record. Neither the total figure claimed by the petitioner nor the alternative figure suggested by the respondents can be accepted mechanically.

26.8. This Court has already held that the liability of the BBMP is established and that the matter can appropriately be considered in exercise of the public law jurisdiction of this Court. The question at this stage is the extent of compensation.

26.9. This Court accepts the submission of the petitioner that, once the liability for the injury caused by the falling tree is established and no further trial is required for that purpose, the absence of a statutory formula for calculating compensation cannot be a reason to deny proper compensation. The injury has been suffered. The loss arising from that injury has to be assessed. The difficulty is only that the law applicable to the present case does not prescribe a particular method for arriving at the amount.

26.10. In such a situation, the Court has to adopt a reasonable method of assessment. There can be no doubt that some losses can be calculated with reasonable accuracy. Medical expenses, hospital expenses, treatment expenses and loss of income for a particular period may, for example, be proved through documents. Other losses cannot be calculated in the same manner. Pain and suffering, loss of enjoyment of life, permanent disability and the effect of an injury on the person's ordinary life necessarily involve an element of assessment.

26.11. The fact that there is no fixed formula for these losses does not mean that the Court has to arrive at an amount by guesswork. The Courts have, over a period of time, developed principles for assessing compensation for bodily injuries in motor accident cases. Those principles provide a useful guide because they deal with the very question which arises here, how the financial and other consequences of a bodily injury are to be assessed.

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26.12. The reason for referring to motor accident cases is not that the present case is a motor accident claim. It plainly is not. The reason is that the nature of the injury and its consequences may be similar even though the cause of the injury is different.

26.13. A person who suffers a fracture, amputation, spinal injury, traumatic brain injury, loss of limb or organ, permanent or temporary disability, loss or diminution of earning capacity, disfigurement, prolonged pain, psychological or neurological consequences, or any other bodily injury does not suffer a different kind of loss merely because the injury was caused by a particular instrumentality, agency or hazardous condition. The injury suffered by the person, and the physical, functional, economic and noneconomic consequences flowing from that injury, remain the same in their essential character irrespective of the manner in which the injury was caused.

26.14. Such injury may, for example, result from a motor vehicle accident; a railway accident; a dangerous or defective vehicle; a defective or improperly maintained road, bridge, flyover, footpath, pavement, culvert or other transportation infrastructure; an unfilled or inadequately barricaded pothole; an open or inadequately secured manhole, drain, sewer, trench or excavation; a dangerous, diseased or improperly maintained tree, branch or other vegetation; a falling wall, building, balcony, roof, slab, hoarding, signboard, pole or other structure; defective, unsafe or negligently maintained public or private premises; unsafe or defective construction; an encroachment or obstruction on a public pathway or road; construction, demolition or excavation activity; an exposed, defective or inadequately protected electrical installation; contact with live wires, transformers, electrical poles or other electrical equipment; overhanging, sagging, damaged or inadequately insulated electrical wires; or any other act, omission, defect, failure, obstruction or hazardous condition capable of causing death or serious injury.

26.15. The circumstance which caused the injury may determine who is liable, the source and extent of that liability, the applicable statutory or common-law cause of action, the defences available and the procedure by which the claim is to be adjudicated; but it does not, by itself, alter the nature of the injury suffered by the claimant or convert the resulting physical, functional, pecuniary or non-pecuniary consequences into a different kind of loss. A fracture remains a fracture; paraplegia remains paraplegia; permanent loss of earning capacity remains loss of earning capacity; and the pain, suffering, loss of amenities, medical requirements and other consequences resulting from the injury remain consequences of that injury, irrespective of the instrumentality or agency through which the injury came to be caused.

26.16. The assessment of compensation must therefore commence with the injury and its consequences, and not with the label attached to the source or mechanism of the

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injury. Once the injury is established, the relevant enquiry is as to its nature, severity, duration and permanence; the extent of physical and functional impairment; its effect upon the claimant's capacity to work and earn; the medical, nursing, attendant and rehabilitative requirements arising from it; and the pecuniary and non-pecuniary consequences which the claimant has suffered or is reasonably expected to suffer in the future. The compensation must consequently address, as may be applicable, loss of income or earning capacity, medical and future treatment expenses, rehabilitation, attendant care, nursing, prosthetic or assistive requirements, transportation and other consequential expenses, pain and suffering, loss of amenities, disfigurement and other legally recognised consequences of the injury.

26.17. The different heads of compensation represent different consequences of the injury and are not rendered mutually exclusive merely because they arise from the same underlying event. Loss of income or future earning capacity compensates the economic loss resulting from the claimant's diminished ability to earn. Medical and future treatment expenses compensate the expenditure reasonably attributable to the injury and its continuing consequences. Pain and suffering compensates the physical pain, discomfort and mental distress occasioned by the injury, treatment and continuing disability. Loss of amenities compensates the deprivation of the ordinary activities, pursuits, conveniences and pleasures of life. Attendant care, nursing, rehabilitation, prosthetic devices and other consequential expenses address still other requirements arising from the disability. Each such head may therefore be awarded separately where it represents a distinct and proved consequence of the injury, while ensuring that the same loss is not compensated twice.

26.18. The fact that different causes of injury may give rise to different causes of action or different legal regimes governing liability does not, by itself, justify a different valuation of the same bodily injury and its consequences. The distinction, where relevant, lies primarily in the basis of liability, and not necessarily in the nature or valuation of the injury suffered. Thus, a spinal injury resulting in permanent paraplegia does not become a different injury, for purposes of assessing the consequences suffered by the injured person, merely because it was caused by a collision with a motor vehicle rather than by a defective road, an unsafe public structure, a dangerous electrical installation, a falling tree or branch, an open manhole, a defective machine, an unsafe workplace, negligent medical treatment or any other hazardous condition. The Court must, subject to the statutory framework governing the particular claim, assess compensation by reference to the injury actually suffered and the losses and consequences legally flowing from it. The source of the injury may determine the person against whom the claim is maintainable and the legal basis upon which liability is imposed; it should not, merely because of that difference, determine the monetary value of the physical and functional consequences suffered by the injured person.

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26.19. The cause of the injury may be relevant for deciding liability. It need not, however, determine the manner in which the resulting loss is calculated. Once the Court reaches the stage of assessing compensation, the focus is on the injury suffered and its consequences. This Court must consider what the injured person has actually lost and what further loss is likely to result from the injury.

26.20. This is particularly relevant in the present case because there is no other statutory scale or established formula which can conveniently be applied to an injury caused by the fall of a tree. If this Court were to disregard the principles developed in other personal injury cases merely because the present injury did not arise from a motor accident, there would be a real possibility of compensation being assessed on an entirely ad hoc basis. Two persons suffering substantially similar injuries could then receive widely different amounts depending only upon the manner in which the injury was caused.

26.21. At the same time, the principles applicable to motor accident claims cannot be adopted mechanically. The provisions of the Motor Vehicles Act, 1988 are not being applied to the present case. The petitioner is not being treated as a claimant under that enactment. The statutory requirements and limitations applicable to a motor accident claim have no application unless they independently form part of the law governing the present claim.

26.22. What can be taken from motor accident jurisprudence is the approach adopted by the Courts in assessing the consequences of bodily injury. For example, the Court may examine actual medical expenses, treatment and attendant expenses, loss of income during the period of treatment, future medical expenses, permanent disability, loss of earning capacity, pain and suffering and loss of amenities, depending upon the facts proved in the case.

26.23. The Court must, however, examine each such claim on the evidence available in the present case. A head of compensation cannot be granted merely because it is commonly granted in motor accident cases. Likewise, the multiplier or any other method cannot be applied without considering whether it is suitable to the particular loss proved before the Court.

26.24. The approach, therefore, is a simple one. The Court is not importing the law relating to motor accident claims into the present proceedings. It is only taking guidance from a body of judicial decisions which has considered, in considerable detail, how compensation for bodily injury can fairly be assessed. Such guidance is permissible because the purpose of compensation remains the same, to provide a fair monetary recompense for the loss suffered by the injured person.

26.25. Ultimately, there cannot be mathematical precision in the assessment of damages for personal injury. The Court must nevertheless make the best assessment

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possible on the material placed before it. The absence of a statutory formula makes such an assessment more difficult, but it does not make it impossible. The established principles used in motor accident cases provide a useful starting point, subject always to the facts, evidence and circumstances of the present case. The final award must be just, fair and reasonable, and must bear a proper relationship to the injury and loss actually suffered by the petitioner.

26.26. In **Sushila Devi**, (paragraph 15), the Hon'ble Supreme Court itself adopted a multiplier while determining compensation arising out of a treefall incident. There is therefore sufficient justification for adopting a head-wise assessment and the multiplier method in the present case. The multiplier must, however, be appropriate to the petitioner's age and the loss established on record.

26.27. **BBMP guidelines:** The BBMP guidelines relied upon by respondent Nos.2 and 3 and respondent No.4 prescribe compensation for road and footpath users injured on account of potholes or poor road conditions. They are directed towards a particular category of claims arising from defects in the road itself. The present case concerns a dangerous branch from a tree situated on adjoining private premises which extended over the public road and which had been specifically brought to the notice of the BBMP.

26.28. There is nothing on record to show that these guidelines were intended to prescribe an upper limit upon compensation payable in every case in which the BBMP is found liable for negligence or breach of statutory duty. An administrative guideline framed for expeditious settlement of a particular class of claims cannot restrict the constitutional jurisdiction of this Court or determine the compensation payable after a finding of statutory breach and negligence.

26.29. The nature and seriousness of the injury must also be considered. The petitioner has suffered a serious and permanent spinal injury resulting in traumatic paraplegia. Such injury cannot be treated as an ordinary minor injury merely because the BBMP guidelines prescribe a nominal amount for an injury arising from potholes or poor road conditions.

26.30. The guidelines therefore cannot be treated as a ceiling on the compensation payable in the present case.

26.31. In **Susila** (paragraph 2), the issue concerned the liability of an insurer under Sections 163-A and 166 of the Motor Vehicles Act, 1988 in relation to an accident involving a tree branch and a motorcycle.

26.32. The present proceedings do not arise under the Motor Vehicles Act, 1988. The liability of the BBMP has been determined on the basis of its statutory and public duty after receiving actual notice of the dangerous branch. The decision therefore does not

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assist in determining the BBMP's liability or in restricting the compensation payable, however the principles thereunder can be made applicable to the present matter.

26.33. In **Sulochana** (paragraph 11), the expression "arising out of the use of a motor vehicle" was given "the widest interpretation" in the context of liability under the Motor Vehicles Act, 1988. The petitioner was walking on the public road when the branch fell upon him. The decision therefore has no direct application since no motor vehicle was involved, however the principles of determination of compensation would be applicable to the present matter also.

26.34. The submission that the petitioner's claim amounts to unjust enrichment cannot be accepted as a ground to reject the claim. The petitioner has suffered a serious and permanent injury and the BBMP has been found liable. The proper approach is to examine each head of claim and award only what is established and considered reasonable. If any amount claimed is excessive or unsupported, it can be reduced or rejected. That exercise, rather than an outright rejection of the claim, ensures that the petitioner receives just compensation without resulting in unjust enrichment.

26.35. **Medical expenses already incurred:** It is not in dispute that the petitioner's total medical bills amount to Rs.26,82,077.75/-. It is also not in dispute that Rs.2,37,806/- has already been received from the petitioner's insurer. The resulting net figure of Rs.24,44,271/- appears in the computations placed before this Court by both the petitioner and respondent Nos.2 and 3.

26.36. The medical bills have been produced and the insurance amount has already been deducted. No specific medical bill or item has been identified by the respondents as fabricated, unrelated to the treatment or otherwise liable to be excluded. **Accordingly, this Court accepts Rs.24,44,271/- and awards the said amount towards medical expenses already incurred.**

26.37. **Disability and loss of future earning capacity:** The disability certificate issued by Bowring and Lady Curzon Hospital dated 03.04.2025 assesses the petitioner's medical disability at 85%. The petitioner, however, submits that his functional disability is 100%.

26.38. The distinction between medical disability and functional disability is material. Medical disability is a medical assessment of the extent of physical impairment. Functional disability concerns the effect of that impairment upon the person's ability to earn and to perform the work which he was undertaking before the accident.

26.39. The petitioner has suffered a serious spinal injury resulting in traumatic paraplegia. He has undergone decompression and stabilisation surgery, prolonged hospitalisation and neurorehabilitation and continues to require physiotherapy and

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other supportive treatment. More importantly, the material before the Court shows that the petitioner is now laid up in bed and is unable to independently carry out his ordinary physical activities.

26.40. The submission of respondent No.4 that the petitioner's cognitive faculties remain intact does not alter this position. The ability to think, understand and communicate is not equivalent to the ability to perform the physical functions required for employment. The petitioner was earning his livelihood through employment before the accident. His present condition prevents him from carrying out the physical functions necessary to continue such employment.

26.41. In the peculiar facts of the present case, therefore, the certified medical disability of 85% does not adequately represent the loss of earning capacity. Having regard to the petitioner's actual condition and the permanent consequences of the injury, this Court considers his functional disability to be 100%.

26.42. The petitioner has produced a salary certificate issued by KFINTECH showing a monthly salary of Rs.41,212/-. The genuineness of the certificate has not been specifically challenged. The suggestion that Rs.16,500/- should be adopted because that figure may be used for Lok Adalat settlements cannot displace the actual salary proved by documentary evidence.

26.43. The petitioner was approximately 38 to 39 years of age at the time of the incident. Having regard to his age and applying the principles laid down in **Sarla Verma and Others v Delhi Transport Corporation & Another** [(2009) 6 SCC 121 : 2009 Legal Eagle (SC) 611] (paragraphs 40 and 42) **and National Insurance Company v Pranay Sethi & Others** [2017 SCC Online SC 1270] (paragraphs 42, 44, 57, 59.4 and 59.6), a multiplier of 15 is adopted. In terms of the said decisions, 40% is also added towards future prospects.

26.44. The calculation is as follows:

26.44.1. Monthly salary: Rs.41,212/-.

26.44.2. Addition of 40% towards future prospects: Rs.16,484.80/-.

26.44.3. Monthly income after future prospects: Rs.57,696.80/-.

26.44.4. Annual income: Rs.57,696.80 x 12 = Rs.6,92,361.60/-.

26.44.5. Application of multiplier of 15: Rs.6,92,361.60x15 = Rs.1,03,85,424/-.

26.44.6. Applying 100% functional disability, the loss of future earning capacity is Rs.1,03,85,424/-.

26.44.7. **Accordingly, the petitioner is awarded Rs.1,03,85,424/- towards loss of future earning capacity.**

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26.44.8. The fact that the petitioner's employer continued to pay his salary for a period after the incident does not justify denial of compensation for future earning capacity. The petitioner cannot claim loss of income for a period for which salary was actually received. However, continued salary for a limited period cannot erase the permanent loss of earning capacity caused by the injury. The two matters are distinct.

26.45. **Attendant and care charges:** The petitioner is presently laid up in bed and is unable to independently attend to his ordinary physical requirements. The requirement of an attendant is therefore not a matter of convenience but a direct consequence of and requirement of the injury. Assistance is required for changing position, sitting up, getting out of and into bed, movement, personal hygiene, attending to medical consultations and treatment, and other routine activities which a person without such disability would ordinarily perform independently. The petitioner's continuing physiotherapy, rehabilitation and other treatment further require another person to assist him.

26.46. The circumstances of the petitioner's family also require consideration. His wife is herself physically disabled. It would therefore not be reasonable to expect that the wife can provide the physical assistance required by the petitioner on a continuing basis. The requirement of an attendant is consequently genuine and continuing.

26.47. Having regard to all these circumstances, this Court considers Rs.15,000/- per month to be a reasonable amount towards attendant and care charges.

26.48. Applying the period of 15 years adopted for the long-term computation:

26.48.1. Rs.15,000/- x 12 x 15 = Rs.27,00,000/-.

26.48.2. Accordingly, Rs.27,00,000/- is awarded towards attendant and care charges.

26.49. **Future medical, physiotherapy, massage and rehabilitation expenses:** The petitioner has claimed Rs.65,000/- per month towards future medical and rehabilitation expenses for 15 years, amounting to Rs.1,17,00,000/-. Respondent Nos.2 and 3 have suggested only Rs.50,000/- in total.

26.50. The petitioner's condition is permanent and the requirement for treatment does not end with the completion of the initial surgery or hospitalisation. The petitioner continues to require physiotherapy, rehabilitation, massage, medical review and other supportive treatment. These are not independent or optional expenses. They arise from and are connected with the permanent consequences of the spinal injury.

26.51. The petitioner has produced bills and material showing expenditure of approximately Rs.65,000/- per month. The respondents have not specifically disputed

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any particular bill by demonstrating that it is fabricated, unrelated to the petitioner's condition, duplicated or otherwise incapable of being relied upon. The objection that the bills ought to "stand the test of cross-examination" cannot, by itself, be a sufficient reason to disregard documentary material placed before the Court.

26.52. Where a specific item is shown to be unrelated or otherwise impermissible, the Court can exclude it. But a general objection, without identifying any particular bill or expenditure as false, inflated or unrelated to the treatment, does not justify rejecting the expenditure altogether.

26.53. The nature of the petitioner's injury also makes it reasonable to expect continuing expenditure. Physiotherapy and neuro-rehabilitation are directed not merely towards curing the original injury but towards maintaining the petitioner's physical condition, preventing deterioration and preserving whatever degree of mobility and independence may remain available to him. Massage and related supportive care also form part of the continuing requirements disclosed in the record.

26.54. In these circumstances, and in the absence of a specific and reasoned challenge to the individual expenses, this Court finds no sufficient reason to disbelieve the monthly expenditure of Rs.65,000/- placed before it.

26.55. **Applying the period of 15 years: Rs.65,000/- x 12 x 15 = Rs.1,17,00,000/-. Accordingly, Rs.1,17,00,000/- is awarded towards future medical, physiotherapy, massage and rehabilitation expenses.**

26.56. **Pain and suffering and loss of amenities:** The petitioner suffered a serious spinal injury which required decompression and stabilisation surgery, followed by traumatic paraplegia, prolonged hospitalisation and continuing rehabilitation. He is now confined to bed and has lost the mobility and physical independence which he enjoyed before the accident.

26.57. Pain and suffering and loss of amenities are distinct heads of compensation. Pain and suffering is intended to compensate for the physical pain, discomfort and mental distress caused by the accident, the injuries sustained, the surgical procedures and treatment undergone, and the continuing consequences of the disability. Loss of amenities, on the other hand, relates to the deprivation of the ordinary activities, pursuits, conveniences and pleasures of life which the petitioner was able to enjoy before the accident but is now unable, or substantially less able, to enjoy by reason of the permanent disability.

26.58. The distinction is material in the present case. The petitioner has not merely suffered a temporary injury followed by recovery. The spinal injury has resulted in traumatic paraplegia, with a permanent and profound impairment of mobility and physical independence. The consequences therefore extend far beyond the period of

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treatment and have fundamentally altered his manner of living. The disability will continue to affect him throughout his lifetime.

26.59. It is also necessary to emphasise that the different heads of compensation address different consequences of the injury and that an award under one head cannot, merely by reason of its existence, be treated as compensation for the loss falling under another head. Loss of income or loss of future earning capacity compensates the economic loss suffered by the petitioner by reason of his inability, or diminished ability, to earn. Future medical and treatment expenses compensate the expenditure which the petitioner is reasonably expected to incur in consequence of the injuries and the permanent disability. Pain and suffering compensates the physical pain, discomfort and mental distress resulting from the accident, injuries, surgery, treatment and continuing disability. Loss of amenities of life compensates the deprivation of the ordinary activities, pursuits, conveniences and pleasures of life resulting from the permanent disability.

26.60. These heads therefore operate in different fields. The fact that the petitioner is awarded compensation for loss of income does not compensate him for the medical expenses which he will have to incur in the future, nor does it compensate him for the physical pain and mental distress suffered by him. Likewise, an award towards future medical expenses cannot be treated as compensation for the loss of earning capacity or for the deprivation of the ordinary amenities of life. Each head represents a distinct consequence of the same injury and, subject to avoiding duplication in respect of the same loss, compensation may properly be awarded separately under each of them.

26.61. This distinction assumes particular significance in the present case. The petitioner's traumatic paraplegia has simultaneously resulted in loss of earning capacity, continuing and future medical and rehabilitative requirements, physical pain and suffering, and permanent loss of mobility and independence. These consequences are neither identical nor capable of being compensated by a single award under any one head. The assessment must therefore address each proved consequence separately so as to arrive at just compensation, while ensuring that the same loss is not compensated twice.

26.62. In assessing compensation under the heads of pain and suffering and loss of amenities, the Court has taken into consideration the nature and severity of the spinal injury, the decompression and stabilisation surgery undergone, the consequent paraplegia, the prolonged period of hospitalisation and rehabilitation, the physical pain and discomfort suffered, the continuing consequences of the disability, the loss of mobility and independence, and the deprivation of the ordinary amenities and activities of life. The assessment under these heads cannot be made with

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mathematical precision and necessarily involves a broad judicial assessment of the consequences proved in the particular case.

26.63. This Court has also kept in view that the consequences of the permanent disability are not confined to the period of treatment or to the petitioner's earning capacity. The injury has resulted in a profound and lifelong deprivation of mobility, physical independence and the ability to participate in the ordinary activities and enjoyments of life. The pain, suffering and deprivation of amenities are consequently matters which will continue throughout the petitioner's lifetime.

26.64. At the same time, this Court has taken care to maintain the distinction between pain and suffering and loss of amenities. The amount awarded for pain and suffering compensates for the physical pain, discomfort and mental distress occasioned by the injury, surgery, treatment and its continuing consequences. The amount awarded for loss of amenities compensates for the distinct and enduring deprivation of the ordinary activities, conveniences, pursuits and pleasures of life resulting from the permanent disability.

26.65. Having regard to the nature and severity of the spinal injury, the surgical intervention, the traumatic paraplegia, the prolonged treatment and rehabilitation, the permanent loss of mobility and physical independence, and the lifelong consequences of the disability, this Court is of the considered view that ₹5,00,000/- under each of the heads of pain and suffering and loss of amenities, viewed independently, is on the lower side and that the injuries suffered by the petitioner would otherwise justify a higher amount under both these heads.

26.66. However, the petitioner has restricted his claim to ₹5,00,000/- under each of the aforesaid heads. Having regard to the manner in which the claim has been made before the Court, this Court does not consider it appropriate to award an amount in excess of the amount claimed under either of these heads. Accordingly, the petitioner is awarded ₹5,00,000/- towards pain and suffering and a further sum of ₹5,00,000/- towards loss of amenities of life.

26.67. The Court makes it clear that the limitation of the award to ₹5,00,000/- under each head is not because the Court considers that amount to represent the full monetary value of the consequences suffered by the petitioner. On the contrary, having regard to the permanent paraplegia and its lifelong consequences, the Court considers the amount claimed to be lower than the compensation which the injuries would otherwise warrant. The award is confined to the amount claimed under these heads.

26.68. This Court is conscious that no monetary award can restore the petitioner to the physical condition or degree of independence which he enjoyed before the accident. The object of the award is therefore to provide just and reasonable

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compensation for consequences which cannot otherwise be undone. In the circumstances of the present case, the amounts awarded under the respective heads are considered appropriate, having regard to the distinct nature of the losses proved and while ensuring that there is no duplication of compensation.

26.69. **Food and nourishment:** The petitioner has claimed a separate amount under this head. However, no sufficiently distinct material has been placed before the Court to quantify a separate amount over and above the medical, rehabilitation and attendant expenses already considered. The claim under this head is therefore not separately awarded.

26.70. **Educational expenses of the petitioner's daughter:** The petitioner initially claimed Rs.50,00,000/- towards the education of his daughter. In rejoinder, the claim was modified in view of the undertaking given by respondent No.4-school to provide free education until completion of the 12th standard. The school shall honour that undertaking.

26.71. As regards education beyond the 12th standard, it is not known at this stage what stream of education the petitioner's daughter would pursue or what expenditure would be required for the same.

26.72. Be that as it may, this Court has already awarded compensation to the petitioner towards loss of future income/future earning capacity, having regard to the permanent disability suffered by him and its impact upon his capacity to earn. The financial consequences which may arise from the reduction in his future earning capacity are thus taken into account in the award under that head.

26.73. The petitioner cannot, therefore, seek a further and separate award towards the future educational expenses of his daughter by treating the same as a consequence of the loss of his future income. Such an award would, in substance, amount to compensating the same economic consequence twice. The future educational expenses of the petitioner's daughter are not, in themselves, a separate loss suffered by the petitioner by reason of the bodily injury, nor do they constitute an independent head of damages distinct from the loss of future earning capacity already assessed and compensated.

26.74. Compensation is intended to make good the loss suffered by the injured claimant and the legally compensable consequences flowing from the injury, while avoiding duplication of recovery. Once the petitioner's loss of future earning capacity has been assessed and compensated, the manner in which he may subsequently deploy or be required to deploy that income, including towards the education of his daughter, cannot give rise to a further independent award under a separate head.

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26.75. Accordingly, no separate amount is awarded towards the future educational expenses of the petitioner's daughter.

26.76. **Interest** The petitioner has sought interest at 6% per annum from the date of the incident. The rate has not been specifically disputed by respondent Nos.2 and 3. Having regard to the nature of the compensation awarded and the period for which the petitioner has been deprived of the benefit of the amount, interest at 6% per annum is considered reasonable. Interest shall accordingly be payable at 6% per annum from 07.03.2024, being the date of the incident, until the date of actual payment.

26.77. **Adjustment of amounts already paid:** The BBMP has already paid Rs.5,00,000/- to the petitioner. That amount shall be credited against the compensation payable by the BBMP.

26.78. The school has separately paid Rs.3,00,000/-. As held while answering Point No. (viii), no further monetary liability is being imposed upon respondent No.4 in these proceedings. The school's payment was made pursuant to its voluntary commitment and is not a payment made on behalf of the BBMP. Accordingly, the Rs.3,00,000/- paid by the school shall not be deducted from the compensation payable by the BBMP.

26.79. The Rs.2,37,806/- received from the insurer has already been taken into account while determining the net medical expenditure of Rs.24,44,271/-. No further deduction is therefore warranted on that account.

26.80. **Total compensation:** The compensation awarded under the several heads is as follows:

Head	Amount in Rs.
Medical expenses already incurred	24,44,271/-
Loss of future earning capacity	1,03,85,424/-
Attendant and care charges	27,00,000/-
Future medical, physiotherapy, massage and rehabilitation expenses	1,17,00,000/-
Pain and suffering	5,00,000/-
Loss of amenities	5,00,000/-
Gross compensation	**2,82,29,695/-**

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26.81. The gross compensation determined by this Court is therefore Rs.2,82,29,695/- (Rupees Two Crores Eighty-Two Lakhs Twenty-Nine Thousand Six Hundred and Ninety-Five only).

26.82. The BBMP has already paid Rs.5,00,000/-. Giving credit only for that amount, the balance payable by respondent Nos.2 and 3, representing the BBMP, is Rs.2,77,29,695/- (Rupees Two Crores Seventy-Seven Lakhs Twenty-Nine Thousand Six Hundred and Ninety- Five only).

26.83. The Rs.3,00,000/- paid by respondent No.4school shall not be deducted from this amount. The school shall, in addition, continue to honour its undertaking to provide free education to the petitioner's daughter until completion of the 12th standard.

26.84. The petitioner shall accordingly be entitled to Rs.2,77,29,695/- together with interest at 6% per annum from 07.03.2024 until the date of actual payment, subject to the directions contained in the operative portion of this order.

26.85. This Court answers Point No. (ix) by holding that the petitioner is entitled to reimbursement/compensation towards medical, rehabilitation, physiotherapy and attendant expenses, loss of earning capacity, future medical requirements, pain and suffering, loss of amenities and other consequential losses, to an extent of **Rs.2,77,29,695/- together with interest at 6% per annum from 07.03.2024 until the date of actual payment.**

27. **Answer to Point No. (x): What order or relief?**

27.1. Learned counsel for the petitioner sought a direction for payment of the entire computed compensation by the BBMP with interest, a direction for provision of suitable employment to the petitioner's wife as promised, and a direction for provision of employment to the petitioner's daughter after completion of her education, apart from the education expenses already dealt with under Point No.(ix).

27.2. Sri B.S. Karthikeyan, learned counsel for respondent Nos.2 and 3, submitted that no promise of employment to the petitioner's wife was ever made by the BBMP, and that the exgratia payment cannot be read as an admission of any such promise.

27.3. Insofar as compensation is concerned, the order to be passed follows directly from the findings recorded on Points No.(i) to (ix) above, and is set out in the operative directions at the end of this order.

27.4. Insofar as the prayer for employment of the petitioner's wife and daughter is concerned, this Court is of the view that no such direction can be issued. The compensation being awarded in the present proceedings is for the injuries suffered by the petitioner and the losses and consequences arising therefrom. The award of such

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compensation cannot create or confer a right to employment upon a member of the petitioner's family.

27.5. The petitioner is not a government employee and the present case does not involve any statutory or other scheme under which his wife or daughter can claim compassionate appointment.

27.6. Insofar as the petitioner's wife is concerned, the prayer is also based on an alleged verbal assurance said to have been given by unnamed representatives of the school and the BBMP while the petitioner was hospitalised. Respondent Nos.2 and 3 specifically deny having given any such assurance. Unlike the undertaking relating to the education of the petitioner's daughter, there is no written undertaking, resolution, scheme, sanctioned post or other binding obligation placed before this Court which could form the basis for issuing a mandamus directing either the BBMP or the school to provide employment to her.

27.7. The same principle applies to the prayer for employment of the petitioner's daughter. There is no existing vacancy, recruitment scheme, sanctioned post or binding undertaking under which she can claim appointment either with the BBMP or the school. The fact that the petitioner has suffered serious injuries and that compensation is being awarded to him cannot give rise to an enforceable right in his daughter to secure employment. Such a direction would, in effect, create an employment opportunity outside the ordinary recruitment process, which cannot be done in exercise of the writ jurisdiction of this Court merely as a consequence of the injury suffered by the petitioner.

27.8. Employment is not a head of compensation for the injuries suffered by the petitioner and no independent right to appointment has been established in favour of either his wife or daughter.

27.9. Accordingly, no direction can be issued to the BBMP or the school to provide employment to the petitioner's wife or daughter. The compensation awarded to the petitioner is intended to address the injury and the losses consequential thereto, and no additional employment-related relief is warranted.

27.10. Point No.(x) is answered by holding that the writ petition succeeds in part, to the extent of the compensation directed to be paid as set out in the operative portion of this order, and that the prayers for employment to the petitioner's wife and daughter are not capable of being granted as mandatory directions on the material presently before this Court, save for the request made to the respondents to extend sympathetic consideration as observed above.

27.11. In view of the foregoing discussion and the answers recorded to the points for determination, this Court passes the following

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ORDER

(i) The writ petition is **allowed in part**.

(ii) Respondent Nos.2 and 3 (the Commissioner, Bruhat Bengaluru Mahanagara Palike Now GBA, and the Deputy Conservator of Forests, Forest Unit, Bruhat Bengaluru Mahanagara Palike Now GBA) are jointly directed to pay to the petitioner a sum of **Rs.2,77,29,695/-** together with interest at 6% per annum from 07.03.2024 until the date of actual payment, being the net compensation computed under Point No.(ix) after adjusting the ex-gratia amounts already paid.

(iii) The amount together with interest, as directed above, shall be paid to the petitioner, transferred to his account by way of RTGS **within twelve weeks** from the date of receipt of a certified copy of this order, failing which it shall be open to the petitioner to take such further steps in accordance with law as may be available to him for realisation of the amount.

(iv) Respondent Nos.2 and 3 are granted liberty to institute or pursue such proceedings as may be permissible in law against respondent No.4 for recovery of such contribution, if any, as they may be advised to claim on account of the tree in question having stood on the premises of respondent No.4; this order does not finally decide, and leaves entirely open, the question of apportionment of liability as between respondent Nos.2 and 3 on the one hand and respondent No.4 on the other.

(v) Respondent No.4 shall continue to provide free education to the petitioner's daughter until she completes the 12th standard, consistent with its own undertaking recorded in this order;

(vi) The incident having occurred on 07.03.2024, the BBMP Act, 2020 which was in enforce, hence, the BBMP had been arrayed as respondent No.2. During the pendency of the above matter, the Greater Bengaluru Governance Act, 2024 has been brought into force. The location where the incident occurred comes within the jurisdiction of Bangalore Central City Corporation and it is for that reason that vide order dated 02.09.2025, the BBMP was substituted by the Bangalore Central City Corporation. Thus, All the assets and liabilities of the BBMP being taken over by the GBA and the respective corporations constituted thereunder. It would be the Bangalore Central City Corporation that would be responsible for discharge of the compensation awarded in the present matter.

(vii) Though the above matter is disposed relist on 05.01.2027 to report progress with the compliance of the general directions appended to this Order.

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This Court has been assisted by Mr. Sourav, Law Clerk, in reviewing this Judgement.

Sd/-

(SURAJ GOVINDARAJ)

JUDGE

Prs GENERAL DIRECTIONS FOR A PUBLIC SAFETY HAZARD DETECTION AND RESPONSE MECHANISM

1. **Need for General Directions**

1.1. The present case has brought to the notice of this Court a problem which is not confined to trees or to any one department. A public safety hazard may arise from a dangerous tree or branch, a damaged road, an open manhole, a blocked drain, an exposed electrical installation, unsafe construction, an encroachment, a damaged public structure or any other condition which may cause death or serious injury.

1.2. In many cases, the difficulty is not the absence of statutory power. The concerned authority may already have the power to inspect, regulate, remove, repair, restrict access or take other protective measures. The difficulty lies in identifying the danger, recording it, determining who is responsible, assessing its urgency and ensuring that action is actually taken within a reasonable time.

1.3. This Court is therefore of the view that the State Government should establish a general mechanism by which a public safety hazard, once reported or detected, is not allowed to remain unattended merely because the responsibility is divided between different departments, authorities, contractors, utilities or private owners.

1.4. The object of these directions is not to create an absolute or continuous duty to inspect every public or private asset. Such an obligation may neither be practicable nor necessary. The object is to ensure that once a danger is brought to the notice of the competent authority, or is otherwise reasonably identified, the information is recorded, assessed according to the degree of risk, entrusted to a named person or authority and followed through until the danger is made safe and the remedial work is independently verified.

2. **Meaning and Scope of Public Safety Hazard**

2.1. For the purposes of these directions, a public safety hazard means any condition, whether arising from a public asset, private property, utility, construction activity, natural condition or other source, which poses an actual or reasonably foreseeable risk of death or serious bodily injury to persons using or likely to use a public place.

2.2. The expression shall include, but not be limited to:

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2.2.1. dangerous or hanging trees and branches;

2.2.2. potholes, road depressions, cracks, damaged road edges and other roadsurface defects;

2.2.3. open manholes, uncovered drains and other dangerous openings;

2.2.4. blocked or damaged drains and conditions causing serious waterlogging;

2.2.5. damaged or obstructed footpaths;

2.2.6. exposed electrical wires, installations or other utility hazards;

2.2.7. unsafe construction, excavation or roadcutting activity;

2.2.8. damaged bridges, walls, barriers, poles and other public structures;

2.2.9. unsafe buildings, hoardings and temporary structures;

2.2.10. dangerous streetlights, traffic signals or traffic infrastructure;

2.2.11. unsafe public transport facilities, bus stops, terminals and passenger areas;

2.2.12. unsafe public buildings, schools, hospitals, parks, playgrounds and places of assembly;

2.2.13. blocked emergency routes and unsafe crowd-management arrangements;

2.2.14. flooding, landslides, unstable slopes, dangerous water bodies and other natural or weather-related hazards;

2.2.15. garbage accumulation, hazardous dumping and other sanitation conditions capable of causing serious injury;

2.2.16. conditions affecting accessibility, including damaged or blocked ramps, tactile paving and pedestrian infrastructure;

2.2.17. encroachments, illegal parking or other obstructions which materially increase the risk of injury;

2.2.18. any other condition presenting a comparable risk to life or serious bodily safety.

2.3. The mechanism should be capable of being expanded when new categories of public safety risk are identified.

3. **Multiple Sources of Information**

3.1. The State Government shall establish a mechanism by which information regarding public safety hazards can be received from multiple sources.

3.2. Such sources may include:

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3.2.1. citizens;

3.2.2. police and traffic personnel;

3.2.3. municipal and departmental field staff;

3.2.4. public transport personnel;

3.2.5. utility staff;

3.2.6. contractors;

3.2.7. schools and educational institutions;

3.2.8. hospitals;

3.2.9. resident associations;

3.2.10. fire and emergency services;

3.2.11. inspection teams;

3.2.12. vehicle-mounted cameras and other technological systems; and

3.2.13. any other person or institution which becomes aware of a dangerous condition.

3.3. Citizens should be permitted to submit photographs, videos, location information and other supporting material along with a complaint.

3.4. Existing public transport buses, garbage collection vehicles, inspection vehicles, municipal vehicles, police and traffic vehicles and other field resources having suitable cameras should, wherever reasonably practicable, be used to identify visible public safety hazards. The purpose should be to use existing infrastructure to the maximum extent possible rather than create a completely new infrastructure.

3.5. Every report or detection shall receive a unique identification number, together with the date and time of receipt or detection.

3.6. The original information should be preserved in a manner which permits the subsequent history of the matter to be established.

4. **One Point of Reporting and Traceability**

4.1. Information concerning a public safety hazard should, as far as practicable, enter through a common digital mechanism, even where the information originates from different departments or sources.

4.2. The purpose is not to transfer the statutory functions of one authority to another. It is to ensure that the information is not lost merely because the citizen does not know which department has jurisdiction.

4.3. Once a report is received, the system should record:

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4.3.1. the date and time of receipt;

4.3.2. the location;

4.3.3. the nature of the hazard;

4.3.4. the source of the information;

4.3.5. photographs, video or other supporting material;

4.3.6. the authority or department to which the matter has been assigned;

4.3.7. the urgency classification;

4.3.8. the officer responsible for verification;

4.3.9. the action taken; and

4.3.10. the date and manner in which the matter was finally closed.

4.4. A matter should remain traceable from the initial report until final closure. It should not be possible for a complaint to disappear merely because it has been transferred from one department to another.

5. **Registration and Certification of Vehicle- Mounted Cameras**

5.1. Where vehicle-mounted cameras are used for detecting public safety hazards, every participating vehicle and camera should be registered in the system.

5.2. The registration should be linked to, but remain distinct from, the vehicle registration maintained under the Motor Vehicles Act, 1988.

5.3. The registration record should contain, as appropriate:

5.3.1. a unique identification number for the vehicle;

5.3.2. vehicle registration details;

5.3.3. identity of the owning or operating entity;

5.3.4. camera identification and serial number;

5.3.5. date of installation;

5.3.6. certification details; and

5.3.7. details of subsequent inspection, repair, replacement or recertification.

5.4. The registration certificate, fitness certificate and permit, wherever applicable, should be verified before the vehicle is brought into the system.

5.5. Driver identity may be maintained separately by the vehicle-owning entity. Such information should not ordinarily form part of the civic monitoring record and should be accessed only where a specific and logged requirement exists for resolving a particular issue.

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5.6. The vehicle-owning entity should ordinarily be responsible for installation of the camera, either through trained personnel or an appropriately qualified technician.

5.7. The State Government should prescribe common technical standards concerning the position, height, angle, field of view, image quality, connectivity, storage and other requirements necessary to ensure reasonably consistent data.

5.8. A camera should not become operational for the purposes of the mechanism until its installation has been inspected or remotely calibrated and certified.

5.9. The certificate should record, at a minimum, the date of installation, camera serial number, identity of the vehicle and the person or agency carrying out the installation.

5.10. Every camera and its mounting should have reasonable protection against tampering. Where the camera is opened, moved, disconnected or otherwise interfered with, the system should flag the equipment and the data generated thereafter until the equipment is inspected and recertified.

5.11. Cameras should be periodically recertified and should also be recertified following repair, replacement or reported tampering.

6. **What Moving Cameras Should Capture**

6.1. Vehicle-mounted cameras should ordinarily be directed towards the public road and its surroundings. They should not deliberately be directed towards the inside of a vehicle or private premises.

6.2. As far as reasonably practicable, one journey should be capable of identifying different classes of public safety problems, including:

6.2.1. potholes and road-surface defects;

6.2.2. cracks, depressions and damaged road edges;

6.2.3. footpath defects and blocked pedestrian paths;

6.2.4. drainage defects and waterlogging;

6.2.5. garbage and sanitation problems;

6.2.6. damaged or non-functioning streetlights;

6.2.7. traffic signs, signals and road markings;

6.2.8. unsafe parking and encroachments affecting public movement;

6.2.9. road digging and unsafe construction activity;

6.2.10. trees and dangerous or hanging branches;

6.2.11. damaged public structures;

6.2.12. exposed utility installations;

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6.2.13. unsafe conditions affecting accessibility;

6.2.14. such other visible conditions as may reasonably be identified through the system.

6.3. The camera should therefore operate as a moving observation point for the public environment, and not merely as a singlepurpose inspection device.

7. **Timestamp, Location and Integrity of Digital Records**

7.1. Every image or video segment should, at the time of capture, automatically record the accurate date, time and geographical location at which it was captured.

7.2. Where technologically feasible, the image or provided with a hash value at the point of capture.

7.3. The system should preserve the identity of the source, device, date, time, location and other relevant metadata.

7.4. Where network connectivity is available, the signed material should be promptly uploaded to the central system through an encrypted connection.

7.5. Where connectivity is unavailable, the material should be securely retained locally and uploaded automatically when connectivity is restored.

7.6. Absence of connectivity should not result in loss of the record or permit alteration of the record before transmission.

7.7. The receiving system should independently verify the integrity of the material. Where the hash value or other integrity verification does not correspond with the original record, the material should be flagged and should not be relied upon for generating a finding until the discrepancy is examined.

8. **Digital Record of Public Assets**

8.1. Every significant public asset should progressively be assigned a unique Digital Asset ID.

8.2. The Digital Asset record should, wherever applicable, contain:

8.2.1. location;

8.2.2. identity and ownership of the asset;

8.2.3. responsible authority;

8.2.4. construction details;

8.2.5. contractor;

8.2.6. tender and contract details;

8.2.7. technical specifications;

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8.2.8. completion and inspection records;

8.2.9. warranty period;

8.2.10. complaints;

8.2.11. repairs;

8.2.12. photographs;

8.2.13. expenditure;

8.2.14. recurring defects; and

8.2.15. other information necessary to understand the history and present condition of the asset.

8.3. The Digital Asset record should be progressively linked with contracts, work orders, warranties, permissions, road-cutting permissions, building and advertising permissions, utility records and other relevant governmental records.

8.4. The purpose is to ensure that when a hazard is detected, the system can identify not merely the location but also the authority, contractor, owner or other person who may have responsibility for addressing it.

9. **Artificial Intelligence as an Aid, Not as the Decision-Maker**

9.1. Artificial intelligence and computer vision may be used to identify possible hazards from photographs, video, satellite imagery, GIS data, drones and other sources.

9.2. Different specialised models may be used for different categories of hazards, such as roads, drainage, trees, utilities, structures, sanitation or accessibility.

9.3. The system should record the confidence level of an AI detection and the model and version which generated it.

9.4. A detection confirmed by more than one independent source may appropriately be given greater confidence.

9.5. The following principle shall govern the use of artificial intelligence:

“AI may identify a possible problem. It shall not itself decide that a law has been violated, that an encroachment exists, that a contractor is at fault, that a person has committed an offence or that coercive action should be taken.”

9.6. Every significant AI-generated detection shall undergo human verification.

9.7. Where the issue involves a technical question, the matter should be examined by a suitably qualified engineer, arborist, structural expert, electrical officer, fire-safety officer or other competent professional.

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9.8. The competent statutory authority shall thereafter take the decision under the law applicable to the subject.

9.9. An officer should be permitted to disagree with an AI-generated finding, whether by dismissing it, reducing its priority or increasing its priority, provided the reason is recorded.

9.10. An officer should not be penalised merely because the officer, acting honestly and for recorded reasons, disagrees with an AI finding.

10. **Certification and Testing of AI Models**

10.1. No AI model should be permitted to generate a finding having legal, financial or contractual consequences for a citizen, contractor or other person until its performance has been tested and certified by the competent authority.

10.2. The certification record should include:

10.2.1. model version;

10.2.2. testing methodology;

10.2.3. accuracy;

10.2.4. false-positive rate;

10.2.5. false-negative rate; and

10.2.6. performance for each category for which the model is used.

10.3. Every modification, replacement or withdrawal of a model should be recorded.

10.4. Where a model repeatedly produces incorrect findings, it should be withdrawn from producing findings having legal, financial or contractual consequences until its performance has been examined and corrected.

10.5. Every AI finding subsequently found to be incorrect should be recorded against the relevant model and model version. The circumstances leading to the error should be examined.

10.6. This safeguard is necessary because a system intended to increase public confidence should not itself become a source of arbitrary action.

11. **Human Verification and Risk Classification**

11.1. A possible hazard identified through a camera, AI system or citizen complaint should be verified by a designated field officer.

11.2. Following verification, the matter should be classified according to the urgency of the risk.

11.3. Four broad categories may be adopted:

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11.3.1. Emergency — an imminent danger to life or serious bodily injury;

11.3.2. High Risk — a serious danger requiring urgent intervention;

11.3.3. Medium Risk — a condition requiring timely rectification but not presenting an immediate threat to life; and

11.3.4. Routine — a minor or no n-urgent condition.

11.4. Classification shall depend upon the actual risk and not merely upon the category of infrastructure.

11.5. Thus, a tree may ordinarily constitute a routine maintenance issue. A large branch hanging over a busy road and reported as capable of falling may constitute an Emergency. Similarly, an ordinary pothole may require routine repair, whereas a large cavity on a busy road may constitute a High Risk or Emergency condition.

12. **Time-Bound Response**

12.1. As a working methodology, the following response periods may be adopted:

12.1.1. Risk level Verification Safety/Repair

12.1.2. Emergency within 4 hour immediate safety measure, ordinarily within 24 hours; complete repair within 7 days

12.1.3. High Risk within 24 hours ordinarily within 7 days

12.1.4. Medium Risk within 72 hours ordinarily within 15 days

12.1.5. Routine within 7 days ordinarily within 30 days

12.2. These periods may be modified according to the nature of the hazard and the statutory authority competent to act.

12.3. An Emergency shall not be placed in the ordinary administrative queue.

12.4. Where necessary, an immediate safety measure shall be taken first and permanent rectification thereafter.

12.5. The purpose of prescribing time limits is not to convert every administrative delay into a legal wrong. The purpose is to ensure that an officer receiving information regarding an imminent danger understands that such information requires a response proportionate to the risk.

13. **Immediate Protection of Life**

13.1. Where an Emergency is identified, the immediate objective shall be protection of life.

13.2. Depending upon the circumstances, the authority may:

13.2.1. cordon the area;

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13.2.2. divert traffic or pedestrians;

13.2.3. evacuate persons;

13.2.4. stop dangerous work;

13.2.5. place warnings;

13.2.6. provide temporary support;

13.2.7. arrange emergency lighting;

13.2.8. disconnect or isolate a utility where lawfully permissible; or

13.2.9. take any other lawful measure necessary to reduce the immediate risk.

13.3. Immediate protective action should not await permanent rectification where the latter requires a separate permission, sanction or technical assessment.

13.4. Where the danger affects a public road but originates upon private property, the authorities shall coordinate with the owner or occupier and exercise the powers available under law.

13.5. A dispute regarding ownership, jurisdiction or eventual cost shall not result in an identified imminent danger being left unattended.

13.6. Where an Emergency is detected, an immediate alert should be sent to the concerned Nodal Officer, the local coordinating body and, where public safety is at immediate risk, the police control room and fire and emergency services.

14. **Named Authority and Named Officer**

14.1. Once a hazard has been verified, the system should identify the authority, department, utility, contractor, owner or other person responsible for dealing with it.

14.2. Every concerned department or agency shall designate a Nodal Officer and a named alternate.

14.3. The Nodal Officer shall be responsible for ensuring that the matter is verified, assigned, acted upon, recorded and closed within the applicable time.

14.4. Where more than one authority is involved, the system shall identify:

14.4.1. the authority responsible for immediate protective action;

14.4.2. the authority responsible for permanent rectification; and

14.4.3. the other authorities required to provide assistance.

14.5. Uncertainty regarding ultimate responsibility shall not prevent immediate protective action. Questions of inter se responsibility may thereafter be resolved administratively or in accordance with law.

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15. **Work Order and Remedial Action**

15.1. Following verification and attribution, a traceable Work Order should be issued.

15.2. The Work Order should contain:

15.2.1. location;

15.2.2. photograph or relevant image;

15.2.3. nature of the problem;

15.2.4. urgency level;

15.2.5. Digital Asset ID;

15.2.6. responsible department or contractor;

15.2.7. applicable contract or warranty;

15.2.8. prescribed time limit; and

15.2.9. where appropriate, the period during which recurrence will be monitored.

15.3. For an Emergency, immediate protective action shall not await completion of the ordinary Work Order process.

15.4. The responsible department or contractor shall carry out rectification within the prescribed period.

15.5. A statement by a contractor or department that the work has been completed shall not, by itself, close the case.

15.6. The completion record should contain the date, time, location, description of the work, photographic or other evidence and the name of the person responsible.

16. Independent Verification of Rectification

16.1. Every Emergency and High Risk matter should be independently verified before closure.

16.2. In addition, at least 25 out of every 100 Medium and Routine matters, selected at random, should undergo an independent field visit or AI-assisted re-check before closure.

16.3. An AI-assisted re-check may supplement, but should not necessarily replace, independent human verification.

16.4. The purpose of independent verification is to ensure that the administrative record does not show a matter as “closed” merely because a contractor or departmental officer has stated that the work is complete.

17. **Recurrence Monitoring and Root-Cause Analysis**

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17.1. A repaired location should not necessarily be treated as permanently resolved immediately after closure.

17.2. The recurrence monitoring period should be fixed having regard to the nature of the asset and the repair. For roads and drains, a 90-day recurrence period may ordinarily be adopted as a starting point, subject to modification according to the nature of the work.

17.3. If the same problem returns at the same location within the recurrence period, it should be linked to the earlier repair record and should not be treated as a fresh and unrelated case.

17.4. The record should therefore show the complete history.

17.5. Repeated failure should trigger a root-cause analysis.

17.6. The analysis should examine, as appropriate:

17.6.1. whether the original diagnosis was correct;

17.6.2. whether the repair was technically adequate;

17.6.3. whether the correct material was used;

17.6.4. whether the contractor complied with the contract;

17.6.5. whether maintenance was inadequate;

17.6.6. whether the asset had reached the end of its useful life; and

17.6.7. whether some systemic cause requires correction.

17.7. The concerned monitoring and evaluation function should review, at least every three months, the duration for which repairs remain effective, the frequency of recurrence, contractor performance and locations where repeated failures occur.

18. **Predictive and Preventive Maintenance**

18.1. The information collected under these directions should progressively be used not merely to respond to complaints but to prevent foreseeable hazards.

18.2. Repeated complaints, repeated repairs, age of assets, inspection records, weather conditions, traffic levels and other relevant information may be used to identify assets requiring preventive inspection or maintenance.

18.3. Where reliable data shows that a particular road, drain, tree, structure, utility installation or other asset repeatedly presents a risk, the concerned authority should consider proactive intervention.

18.4. This does not impose an unqualified duty to inspect every asset continuously. The obligation is to use available information intelligently so that a known pattern of risk is not repeatedly treated as an isolated event.

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19. **Civic Hotspots**

19.1. Where several different hazards repeatedly occur at the same location, the location should be identified as a civic hotspot.

19.2. A civic hotspot may, for example, have a pothole, garbage accumulation, waterlogging, blocked footpath, unsafe parking and inadequate lighting at the same time.

19.3. Such a location should, where appropriate, be addressed through a coordinated intervention rather than six independent departmental responses.

19.4. The purpose is to correct the underlying condition of the location rather than merely close individual complaints.

20. **Trees and Other Hazards Requiring Statutory Permission**

20.1. Where a dangerous condition concerns a tree, building, utility, road or other matter for which a statutory permission is required, the requirement of obtaining permission shall not be ignored.

20.2. At the same time, the requirement of permission shall not become a reason for inaction where an immediate danger to life exists.

20.3. The authority receiving the information shall, according to its statutory powers, take or coordinate immediate protective measures and thereafter complete the necessary statutory process for permanent rectification.

20.4. In relation to dangerous trees, the concerned authority shall review and periodically update its existing Standard Operating Procedure so that:

20.4.1. dangerous and dried branches are identified;

20.4.2. applications are treated according to their urgency;

20.4.3. inspections are undertaken where necessary;

20.4.4. interim safety measures are available;

20.4.5. permissions are processed expeditiously; and

20.4.6. responsibility for delay can be identified.

20.5. The existence of a statutory procedure is of little value if the officer receiving a report does not appreciate the urgency with which that procedure is required to operate.

21. **High-Risk Assets and Periodic Inspection**

21.1. Certain assets may, by their nature, age, location, condition or consequence of failure, require periodic inspection even in the absence of a complaint.

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21.2. The concerned authority should identify such assets and prescribe appropriate inspection intervals.

21.3. Particular attention should be given to:

21.3.1. old trees and trees previously reported as dangerous;

21.3.2. bridges and retaining structures;

21.3.3. major roads and traffic structures;

21.3.4. drains and flood-prone locations;

21.3.5. electrical installations;

21.3.6. public buildings;

21.3.7. schools, hospitals and places of assembly; and

21.3.8. other assets where failure may result in serious injury or death.

21.4. The inspection requirement should be proportionate to the risk and should not be understood as requiring continuous physical surveillance of every asset.

22. **Construction, Excavation and Temporary Works**

22.1. Construction, excavation and road-cutting activities affecting public places should be recorded with sufficient information to identify the person or entity responsible.

22.2. The record should, where applicable, include the permission, location, contractor, period of validity, responsible officer and restoration obligation.

22.3. Where an unsafe excavation or construction activity is detected, the responsible authority should be able to identify the person responsible without requiring the citizen to approach multiple departments.

22.4. Immediate danger should be addressed first. Questions concerning penalties, restoration costs, contractual responsibility or other consequences may follow in accordance with law.

23. **Buildings, Structures and Hoardings**

23.1. The mechanism should also cover unsafe buildings, walls, hoardings, poles, temporary structures and other objects capable of falling or collapsing into public areas.

23.2. Where the structure is privately owned but poses a danger to a public road or other public place, the concerned authority shall exercise the powers available under law.

23.3. The identity of the owner, occupier, contractor or other responsible person should be linked to the digital record wherever possible.

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24. **Electricity, Gas, Fire and Other High- Consequence Hazards**

24.1. Exposed live electrical wires, damaged electrical installations, gas leaks, fire hazards and similar conditions shall be treated according to the degree of immediate risk.

24.2. Where necessary, the relevant utility, police, fire and emergency services and local authority shall coordinate immediately.

24.3. The first objective shall be to prevent injury. Allocation of cost or determination of responsibility may follow.

25. **Flooding, Water Bodies and Natural Hazards**

25.1. The mechanism should include flooding, waterlogging, unstable slopes, dangerous water bodies, landslides and other natural or weatherrelated hazards.

25.2. During periods of heavy rain or other exceptional weather, the concerned authorities should activate appropriate special operating arrangements.

25.3. Such arrangements should include particular attention to:

25.3.1. blocked drains;

25.3.2. waterlogging;

25.3.3. fallen trees;

25.3.4. damaged roads;

25.3.5. exposed electrical installations;

25.3.6. unstable structures; and

25.3.7. obstruction of emergency routes.

26. **Traffic and Public Transport Safety**

26.1. Public safety monitoring should include roads, traffic signals, signs, road markings, crash barriers, bus stops, terminals and passenger areas.

26.2. Unsafe parking, encroachments and other obstructions which materially affect pedestrian or vehicular safety should also be capable of being detected and referred to the competent authority.

26.3. Where a hazard affects a road used by public transport, the concerned transport authority and road-owning authority should coordinate so that responsibility is not divided to the detriment of public safety.

27. **Public Buildings, Schools, Hospitals and Places of Assembly**

27.1. Schools, hospitals, public buildings, parks, playgrounds and places of assembly should receive particular attention because large numbers of persons may be exposed

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to a single hazard.

27.2. The authority responsible for the premises should have a duty to report known hazards and take reasonable interim precautions within its lawful control.

27.3. Where the hazard extends beyond the premises and affects a public road or public place, the competent public authority shall also be informed and shall act according to its statutory powers.

28. **Protection of Vulnerable Persons**

28.1. The assessment of a public safety hazard should take account of persons who may face greater difficulty in perceiving or avoiding the danger.

28.2. Particular attention should be given to:

28.2.1. children;

28.2.2. elderly persons;

28.2.3. persons with disabilities;

28.2.4. pedestrians;

28.2.5. persons using wheelchairs or mobility aids; and

28.2.6. other persons who may be particularly vulnerable to the identified hazard.

28.3. Accessibility should therefore form part of the assessment of footpaths, crossings, ramps, tactile paving and other public infrastructure.

29. **Emergency Communication**

29.1. Where an identified hazard presents an immediate danger to life, the system should generate an alert to the concerned Nodal Officer.

29.2. Depending upon the nature of the hazard, the alert may also be sent to the police control room, fire and emergency services, traffic authorities, utility provider or other authority capable of taking immediate protective action.

29.3. The emergency alert shall be in addition to, and not in substitution of, the normal Work Order and rectification process.

30. **Digital Evidence, Audit Trail and Chain of Custody**

30.1. Every material relied upon for an administrative finding should have a traceable audit history.

30.2. The system should record, as appropriate:

30.2.1. who created or uploaded the record;

30.2.2. when it was created or uploaded;

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30.2.3. the source device;

30.2.4. the location;

30.2.5. subsequent access;

30.2.6. alteration, if any;

30.2.7. transfer to another authority;

30.2.8. the person responsible for each material action.

30.3. Where a record is required for disciplinary, contractual, criminal or judicial proceedings, the original record and its chain of custody should be preserved in accordance with law.

30.4. Independent technical testing should be available where tampering or alteration is alleged.

31. **Privacy and Data Protection**

31.1. The use of cameras, images, vehicle-mounted systems and artificial intelligence shall remain confined to legitimate civic administration and public safety purposes and shall comply with applicable privacy and data-protection law.

31.2. Faces and vehicle registration numbers should ordinarily be automatically blurred or otherwise protected wherever identification is not necessary for the specific civic purpose.

31.3. Raw continuous footage should not be retained indefinitely merely because it has been recorded.

31.4. As a working framework:

31.4.1. raw unedited footage may ordinarily be retained for a particular period of time as mandated and extended only where linked to a pending case or appeal;

31.4.2. images and detections linked to a specific case may be retained for the period necessary for the case and applicable legal or contractual requirements;

31.4.3. Digital Asset records may be retained for the life of the asset and an appropriate period thereafter; and

31.4.4. access and activity logs should be retained for a longer period sufficient for audit and legal purposes.

31.5. Accident footage, footage involving children and footage showing persons in evident distress should be subject to stricter access and retention controls.

32. **Cybersecurity**

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32.1. The system should employ appropriate encryption, access controls, authentication, logging and incident-response mechanisms.

32.2. Access to sensitive records should be based on role and necessity.

32.3. Every access to protected records should be logged.

32.4. A cybersecurity incident affecting the integrity or confidentiality of the system should be promptly recorded, investigated and addressed.

33. **Integration with Existing Government Systems**

33.1. The mechanism should, as far as practicable, integrate with existing systems maintained by the Government and local authorities, including:

33.1.1. municipal complaint systems;

33.1.2. Integrated Command and Control Centres;

33.1.3. geographic information systems;

33.1.4. road and public-asset databases;

33.1.5. utility databases;

33.1.6. traffic systems;

33.1.7. building and advertising permission systems;

33.1.8. e-Procurement systems;

33.1.9. contract-management systems; and

33.1.10. other relevant departmental databases.

33.2. The purpose should be integration and interoperability, and not the creation of multiple disconnected databases.

34. **Grievance and Appeal Mechanism**

34.1. A person affected by a detection or finding should have a simple mechanism to challenge:

34.1.1. factual correctness;

34.1.2. attribution of responsibility;

34.1.3. location or date;

34.1.4. integrity of the record;

34.1.5. classification of the hazard;

34.1.6. financial consequence;

34.1.7. contractual consequence; or

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34.1.8. reputational consequence.

34.2. A three-level appeal mechanism should be provided, with progressively higher levels of review.

34.3. The reviewing authority should have access to the underlying material, including the original image or video, metadata, AI finding, human verification and reasons recorded by the officer.

34.4. Where the disputed finding is the sole basis for a penalty, blacklisting or contractual deduction, the consequence may appropriately be kept in abeyance until the challenge is decided.

34.5. The mechanism shall not exclude or restrict the right of any person to approach a civil court, criminal court, statutory tribunal or this Court under Article 226 of the Constitution, where otherwise maintainable.

35. **Governance Structure**

35.1. For effective implementation, the State Government may consider a four-level institutional structure.

35.2. At the State level, an Apex Committee may:

35.2.1. provide policy direction;

35.2.2. approve budgets;

35.2.3. resolve inter-departmental disputes;

35.2.4. approve expansion into new categories;

35.2.5. review annual performance; and

35.2.6. oversee progressive implementation.

35.3. A State-level Mission Directorate may:

35.3.1. build and operate the central system;

35.3.2. prescribe technical standards;

35.3.3. maintain statewide asset records;

35.3.4. certify AI models;

35.3.5. manage the central platform; and

35.3.6. provide information to the Apex Committee.

35.4. At the local level, a City or District Implementation Committee may coordinate implementation.

35.5. The local committee may include representatives of:

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35.5.1. the municipal authority;

35.5.2. police and traffic police;

35.5.3. public works;

35.5.4. water supply and sewerage;

35.5.5. electricity;

35.5.6. fire services; and

35.5.7. where appropriate, resident welfare and disability/accessibility organisations.

35.6. A local Cell may undertake day-to-day verification, Work Orders, repair tracking and rectification verification.

36. **Technical Advisory Committee**

36.1. The State Government may constitute an independent Technical Advisory Committee under the stewardship of the Principal Secretary, e-Governance Department, comprising experts in:

36.1.1. artificial intelligence and computer vision;

36.1.2. geographic information systems;

36.1.3. road and civil engineering;

36.1.4. law and data privacy;

36.1.5. urban planning;

36.1.6. disability and accessibility; and

36.1.7. applied artificial intelligence.

36.2. The Committee may periodically review:

36.2.1. AI performance;

36.2.2. technical architecture;

36.2.3. data safeguards;

36.2.4. annual performance reports; and

36.2.5. proposed expansion into new categories.

37. **Data Protection Officer and Grievance Officer**

37.1. A designated Data Protection Officer should be responsible for compliance with applicable dataprotection law, approval of new categories of data collection, data retention and response to data breaches.

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37.2. A separate Grievance Officer should deal with challenges to detections and other findings.

37.3. The two functions should remain institutionally separate.

38. **Monsoon, Night and Disaster Modes**

38.1. The State Government should consider special operating modes for periods and circumstances in which public safety risks materially increase.

38.2. During the monsoon, particular attention should be given to flooding, blocked drains, waterlogging, fallen trees, damaged roads, exposed electrical installations and obstruction of emergency routes.

38.3. During night operations, particular attention should be given to streetlights, visibility, traffic signals, road hazards and pedestrian safety.

38.4. During disasters, the system should use multiple sources so that failure of one category of camera or network does not result in complete loss of information.

39. Learning from Accidents and Near-Misses

39.1. Every serious accident or near-miss arising from a public safety hazard should, where appropriate, be reviewed to determine:

39.1.1. whether the danger had previously been reported;

39.1.2. whether the authority had notice;

39.1.3. whether the risk was correctly classified;

39.1.4. whether the prescribed response time was followed;

39.1.5. whether an interim protective measure could have prevented the incident;

39.1.6. whether the remedial work was adequate; and

39.1.7. whether the existing Standard Operating Procedure requires modification.

39.2. The purpose of such review is not merely to identify individual fault. It is also to identify systemic failures and prevent recurrence.

39.3. Near-misses should be treated as valuable information because they may reveal a danger before it results in death or serious injury.

40. **Public Visibility and Transparency**

40.1. Subject to privacy and security requirements, a citizen who reports a public safety problem should be able to ascertain:

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40.1.1. where the problem has been reported;

40.1.2. whether it has been verified;

40.1.3. the level of urgency;

40.1.4. which authority or department is responsible;

40.1.5. what action is proposed;

40.1.6. whether the work has been completed;

40.1.7. whether completion has been independently verified.

40.2. The State may progressively publish a public civic dashboard showing, by district, city, ward or zone:

40.2.1. condition of public infrastructure;

40.2.2. overdue matters;

40.2.3. recurring defects;

40.2.4. response times;

40.2.5. expenditure; and

40.2.6. contractor performance.

41. **Civic Infrastructure Health Index**

41.1. The State may progressively develop a composite Civic Infrastructure Health Index covering, among other things:

41.1.1. roads;

41.1.2. footpaths;

41.1.3. drainage;

41.1.4. sanitation;

41.1.5. lighting;

41.1.6. trees;

41.1.7. accessibility;

41.1.8. traffic infrastructure; and

41.1.9. other public assets.

41.2. An Ease of Walking Score may also be developed, taking into account the continuity, width and usability of footpaths, obstructions, safe crossings, ramps, tactile paving, lighting and surface condition.

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41.3. These indices should not become mere rankings. Their purpose should be to identify areas requiring intervention and enable citizens to assess whether public infrastructure is actually improving.

42. **Periodic Public Reporting**

42.1. The State Government and departments and local bodies covered by these directions should, at least once every six months, publish a report in a manner reasonably accessible to the public.

42.2. The report should, at a minimum, indicate:

42.2.1. number of hazards reported under each category;

42.2.2. number verified;

42.2.3. number rectified within the prescribed time;

42.2.4. number pending;

42.2.5. principal reasons for pendency;

42.2.6. recurring hazards;

42.2.7. contractor performance;

42.2.8. expenditure;

42.2.9. duration for which repairs remain effective;

42.2.10. road safety;

42.2.11. accessibility;

42.2.12. sanitation;

42.2.13. drainage; and

42.2.14. other relevant indicators.

42.3. The results should be capable of comparison over time so that the success of the mechanism is measured by actual improvement in public infrastructure and reduction of recurring hazards, and not merely by the number of cameras installed or detections generated.

43. **Cost and Procurement**

43.1. The cost of vehicle-side cameras, mounting, connectivity and local storage may ordinarily be borne by the entity owning or operating the participating vehicle.

43.2. In the case of vehicle aggregators, the installation of the cameras could form part of the licensing and operating requirements.

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43.3. Citizens could also come forward to install the cameras in their vehicles at their own cost, by following the due procedure.

43.4. Procurement should avoid unnecessary vendor lock-in and should ensure that the Government retains control over its data.

43.5. Technical standards should, as far as practicable, be open and interoperable so that the State is not dependent upon one vendor for continued operation.

43.6. Allocation of the ultimate cost of rectification between departments, contractors, utilities, owners or other persons shall be determined in accordance with the applicable law, contract or other legal basis.

43.7. The need to determine who will ultimately bear the cost shall not delay immediate protective action where life is at risk.

44. **Research and Controlled Innovation**

44.1. The State may establish a controlled research and testing environment in which new methods of detecting and assessing public safety hazards can be evaluated before being deployed at scale.

44.2. New AI models, sensors, cameras and other technologies should, where appropriate, be tested for accuracy, reliability, privacy, cybersecurity and practical usefulness before they are relied upon for consequential decisions.

44.3. Research deployments should remain subject to appropriate safeguards and should not be treated as exempt from legal requirements merely because they are experimental.

45. **Training and Capacity Building**

45.1. Officers and personnel responsible for receiving, verifying, classifying or acting upon public safety hazards shall receive appropriate training.

45.2. Such training should include:

45.2.1. statutory provisions applicable to the relevant category of hazard;

45.2.2. Standard Operating Procedures adopted by the concerned department;

45.2.3. applicable response times;

45.2.4. recording and escalation of delay;

45.2.5. use of the digital system;

45.2.6. interpretation and limitations of AI findings;

45.2.7. privacy and data protection; and

45.2.8. preservation of digital records.

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45.3. In relation to trees, training should include the Karnataka Preservation of Trees Act, 1976, the Karnataka Municipal Corporations, Karnataka Act, 1976, the Greater Bangalore Governance Act and such other statutes as applicable.

45.4. Equivalent training should be provided in relation to roads, footpaths, drains, streetlights, electrical installations and other categories of public hazards.

45.5. The purpose of training is not merely to impart knowledge of the law. It is to ensure that an officer receiving information regarding a danger understands the urgency with which the procedure is required to operate.

46. **Review of Existing Standard Operating Procedures**

46.1. All departments and local bodies should review their existing Standard Operating Procedures relating to public safety hazards.

46.2. Each such procedure should identify:

46.2.1. the manner in which information is received;

46.2.2. the officer responsible for verification;

46.2.3. the method of assessing risk;

46.2.4. the immediate safety measures available;

46.2.5. the time within which action should ordinarily be taken;

46.2.6. the authority competent to grant necessary permission;

46.2.7. the manner in which delay is escalated;

46.2.8. the manner in which completion is verified; and

46.2.9. the period for recurrence monitoring.

46.3. The review should specifically identify situations in which an officer has information of an imminent danger but the existing procedure does not provide a clear mechanism for immediate protective action.

47. **Specific Review of the Dangerous Tree Procedure**

47.1. The concerned authorities shall review the existing procedure relating to dangerous trees and branches.

47.2. The review shall consider whether the procedure adequately addresses trees:

47.2.1. standing on public land;

47.2.2. standing on private land but affecting a public road;

47.2.3. standing on private land but threatening neighbouring property;

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47.2.4. having dangerous or hanging branches;

47.2.5. previously reported as dangerous; and

47.2.6. requiring urgent pruning or removal.

47.3. The procedure should provide a clear mechanism for emergency inspection and interim protection where a reported branch or tree presents an immediate danger.

47.4. The review should be completed within three months and the revised procedure should thereafter be implemented within the overall implementation period contemplated by these directions.

48. **Phased Implementation**

48.1. The mechanism contemplated by these directions may be implemented in phases.

48.2. Stage 0 – Preparation: The State Government shall identify the nodal department, prepare technical standards, identify participating authorities, review existing systems and SOPs, identify available camera-equipped vehicles and prepare the basic digital architecture.

48.3. Stage 1 – Bengaluru: The mechanism may first be implemented in Bengaluru, covering the principal municipal, police, traffic, transport, utility and other relevant public authorities.

48.4. Stage 2 – Major Cities: The mechanism may thereafter be extended to major cities, including Mysuru, Mangaluru, Hubballi- Dharwad, Belagavi, Kalaburagi, Shivamogga, Tumakuru, Davanagere and Ballari.

48.5. Stage 3 – Statewide Implementation: Following evaluation of the earlier stages, the mechanism may be extended throughout the State.

48.6. The State Government should endeavour to complete the principal implementation within six months, subject to practical and technical requirements.

49. **Monitoring of the Monitoring System**

49.1. The State shall not measure the success of the mechanism merely by the number of cameras installed, complaints received or AI detections generated.

49.2. The system itself should be monitored for:

49.2.1. camera uptime;

49.2.2. connectivity;

49.2.3. data loss;

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49.2.4. false-positive and false-negative rates;

49.2.5. response times;

49.2.6. overdue matters;

49.2.7. independent verification;

49.2.8. recurrence;

49.2.9. unresolved grievances;

49.2.10. cybersecurity incidents; and

49.2.11. other indicators necessary to establish whether the mechanism is functioning effectively.

49.3. Where a camera, sensor or other monitoring device remains non-functional beyond the prescribed period, the system should generate an alert for corrective action.

49.4. The reliability of the monitoring mechanism is itself a matter of governance. A system which is incapable of showing whether it is functioning cannot provide reliable assurance of public safety.

50. **Review of Effectiveness**

50.1. The State Government shall periodically review whether these directions are producing the intended result.

50.2. The review should examine:

50.2.1. whether hazards are being detected earlier;

50.2.2. whether response times have improved;

50.2.3. whether emergency hazards are being made safe promptly;

50.2.4. whether repeated defects are reducing;

50.2.5. whether contractor performance has improved;

50.2.6. whether departments are responding to one another effectively;

50.2.7. whether citizens can track complaints;

50.2.8. whether AI is producing reliable assistance without becoming the decision-maker; and

50.2.9. whether public infrastructure is becoming safer.

50.3. The mechanism should be modified where experience demonstrates that a particular procedure is ineffective or creates unnecessary administrative burden.

51. **No Absolute or Impossible Duty**

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51.1. Nothing contained in these directions shall be understood as imposing an absolute duty upon any authority to detect every defect or continuously supervise every public or private asset.

51.2. As recognised in **Rajkot Municipal Corporation v. Manjulben Jayantilal Nakum and others** [(1997) 9 SCC 552 : 1997 Legal Eagle (SC) 71], particularly in paragraph 63, the obligation of a local authority must be understood in a practical manner.

51.3. The present directions are intended to ensure that once a danger is actually reported, or is otherwise reasonably identified, the information is not ignored, lost or left unattended without a reasoned response.

51.4. The distinction between an unforeseen event and a known danger must therefore be maintained. These directions are not intended to make an authority an insurer against every accident. They are intended to ensure responsible action where a public safety risk is known or reasonably identifiable.

52. **Existing Law and Remedies Preserved**

52.1. Nothing in these directions shall:

52.1.1. amend or override any statute;

52.1.2. dispense with any statutory permission;

52.1.3. confer a power which the concerned authority does not possess;

52.1.4. restrict any existing right or remedy;

52.1.5. prevent disciplinary action in accordance with law; or

52.1.6. prevent a person from approaching a competent court, tribunal or other statutory authority.

52.2. These directions are intended to strengthen the implementation of existing statutory duties and not to replace them.

53. **Financial and Administrative Responsibility**

53.1. Where immediate protective action is necessary to protect life, such action shall not be delayed merely because the final allocation of expenditure between authorities or persons has not yet been determined.

53.2. The authority taking emergency action may thereafter recover or allocate the cost in accordance with law, contract or applicable rules.

53.3. No automatic liability shall arise merely because a particular authority's vehicle, camera or other system generated a detection. Responsibility shall be

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determined in accordance with the applicable law and the facts of the particular case.

54. **Communication and Compliance**

54.1. These directions shall be communicated by the registry to the Chief Secretary, Government of Karnataka, who is in turn directed to communicate it to:

54.1.1. all concerned departments;

54.1.2. municipal corporations and local bodies;

54.1.3. police and traffic authorities;

54.1.4. public transport authorities;

54.1.5. utility authorities;

54.1.6. fire and emergency services; and

54.1.7. other authorities concerned with public safety.

54.2. Each department and local body shall designate its Nodal Officer and alternate and communicate the details to the State-level coordinating authority.

54.3. The concerned authorities shall review their existing Standard Operating Procedures and identify the changes required for giving effect to these directions.

54.4. A status report regarding implementation should be prepared at the end of the initial sixmonth period and should identify:

54.4.1. the mechanism established;

54.4.2. departments brought within the system;

54.4.3. assets registered;

54.4.4. participating vehicles and cameras;

54.4.5. hazards detected;

54.4.6. hazards rectified;

54.4.7. overdue matters;

54.4.8. recurring hazards;

54.4.9. difficulties encountered; and

54.4.10. further measures proposed.

55. **Continuing Responsibility**

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55.1. Public safety cannot be treated as a one-time administrative exercise. A road repaired today may develop a new defect, a tree previously inspected may later become dangerous, a drain may become blocked again and a structure which was safe at one point may subsequently deteriorate.

55.2. The responsibility of the concerned authority therefore continues in accordance with law and the nature of the asset.

55.3. The information generated through the mechanism should be used to improve future inspection, maintenance and planning.

55.4. The ultimate objective is simple: a citizen should not have to suffer death or serious injury before the administration acts upon a danger which it already knew, or which it could reasonably have identified and addressed.

55.5. **Protection of life must remain the first and foremost consideration.** Administrative procedure, allocation of responsibility, financial sanction, ownership disputes and other questions must be organised around that objective and should not, in an appropriate case, become reasons for leaving an identified danger unattended.

56. The Chief Secretary, Government of Karnataka as also the other road-owning agencies and/or civic agencies responsible for the incident above could also look at insuring their respective agencies against any claim made against them by a citizen. So as to enable faster, speedier and effective availability of compensation to the victims and other survivors.

57. A compliance and Progress report to be filed by the Chief Secretary or such other Officer Authorised by her within 90 days from receipt of a certified copy of this Order.

[1] WA No.1199/2012 dated 17.11.2016

[2] Civil Appeal No.9920/2025

[3] WP No.17877/2023

[4] MFA No.6470/2015 order dated 10.09.2020

[5] MFA No.22468/2011

[6] WP No.17877/2023

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