

RAJASTHAN HIGH COURT

Govind Kumar

Vs.

State of Rajasthan

S.B.C.W.P. No. 11999 of 2008

(Prem Shanker Asopa, J.)

10.11.2008

ORDER

Prem Shanker Asopa, J.

1. Counsel for the petitioners submits that the respondent No. 2 has also been served but no one appears on behalf of respondent No. 2. However, for respondent No. 1 Mr. R.S. Rathore, Additional Government Counsel is present.
2. With the consent of the parties, the case was heard finally.
3. This writ petition is arising out of the interim order dated 13-8-2008 passed by the Additional District and Sessions Judge (Fast Track) No. 2, Bharatpur whereby the application for interim compensation has been rejected on the ground that there is no *prima facie* evidence on record that death of the 4 years' child caused on account of drowning in the pond.
4. The submission of counsel for the petitioners is that the pond was not surrounded by wall by the Municipality and the deceased was playing nearby the pond and further being of the age of 4 years was not knowing the consequences. The State Government in such cases should award ex-gratia amount but here in the instant case, no amount was awarded and his application was wrongly rejected for want of *prima facie* evidence.
5. I have gone through the contents of the writ petition. After Having considered the submissions, in my view, there is a prescription wherein it has been mentioned that the petitioners, who are parents of four years child Annu, brought him dead to the hospital as a case of drowning, which clearly reveals that the *prima facie* case of death is drowning. Therefore, there appears to be no justification for not granting

compensation by the Court.

6. It is the duty of the State and the Municipality to protect area of the pond in small villages where the children used to play in the nearby area and if they fail to do so, then ex-gratia amount is to be awarded by the State itself. But here is the case where the State has contested the issue of interim compensation, which would be subject to the final award/judgment.

7. Before parting with the judgment, I would like to observe that the present case is of fatal accident where there is no provision of no fault liability like Motor Vehicles Act, but still the State being a welfare State cannot escape from its liability to make the interim compensation. Therefore, the State may consider the issue of framing the guidelines for the grant of interim compensation as the case may be.

8. Accordingly, the writ petition is allowed and the impugned order dated 13-8-2008 passed by the Court below is set aside and the respondents are directed to pay an amount of Rs. 40,000/- (Forty Thousand) as interim compensation to the petitioners within a period of one month from today.

Petition allowed.