

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 179 of 2007

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ? YES

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair  
copy of the judgment ? NO

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ? NO

5 Whether it is to be circulated to the civil  
judge ? NO

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**THE STATE OF GUJARAT THRO' THE SECRETARY & 2 - Appellant(s)**  
**Versus**

**BAI DUDHIBEN JERAMBHAI - Defendant(s)**

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**Appearance :**

MR PRANAV DAVE ASST.GOVERNMENT PLEADER for Appellant(s) : 1 - 3.

None for Defendant(s) : 1,

MR DAKSHESH MEHTA for Defendant(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,  
1.2.5,1.2.6

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

Date : 11/05/2012

### ORAL JUDGMENT

1.00. Present Second Appeal under section 100 of the Code of Civil Procedure has been preferred by the appellants herein – original defendants to quash and set aside the impugned Judgement and decree passed by the learned trial

court - learned 6<sup>th</sup> Joint Civil Judge (S.D.), Junagadh in Special Civil Suit No.142 of 1992 dtd.13/12/1996 as well as the impugned Judgement and Order / Decree passed by the learned appellate court - learned Principal District Judge, Junagadh in Regular Civil Appeal No. 119 of 2005 dtd.31/7/2006 by which the learned appellate court has dismissed the said appeal preferred by the appellants – original defendants by confirming the judgement and decree passed by the learned trial court partly allowing the suit and directing the appellants – original defendants to pay Rs.84,200/- with interest thereon at the rate of 12% per annum towards compensation to the plaintiffs for the death of Jerambhai Dayabhai Kumbhar who died because of injury sustained by him due to the attack by the lioness.

2.00. That the respondents - original plaintiffs instituted Regular Civil Suit No. 142 of 1992 in the court of learned Civil Judge (S.D.), Junagadh against the appellants – original defendants for compensation of Rs.1,25,000/- with interest at the rate of 12% per annum.

It was the case on behalf of the plaintiffs that the deceased husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6 went to village Dedkiyal and while returning from there on 11/5/1990, one lioness suddenly assaulted and he was dragged into the jungle and deceased Jerambhai met with an unnatural death due to the attack by the lioness. It was the case on behalf of the plaintiffs that it was the duty of the State Government to take proper care and to protect from imminent danger of the wild animals, however, the defendants have failed in discharging their duty and therefore, State

Government is duty bound to pay compensation to the plaintiffs and therefore, the plaintiffs filed the suit for compensation.

2.01. That the defendants resisted the suit by filing Written Statement at Ex.23 denying that there was any negligence on the part of the State Government due to which the lioness attacked on the deceased. It was also stated by the defendant that the Department has paid Rs.15,000/- to the plaintiffs as per the Government Policy and the plaintiffs were accepted the said amount without any objection. Therefore, it was requested to dismiss the suit.

2.02. That the learned trial court framed issues at Ex.25 and after recording evidence and hearing the parties, the learned trial court partly allowed the suit awarding compensation to the plaintiffs to the tune of Rs.84,200/- with interest at the rate of 12% per annum.

2.03. Being aggrieved by and dissatisfied with the judgement and decree passed by the learned trial court awarding compensation of Rs.84,200/- with interest at the rate of 12% per annum, appellants – original defendants preferred a First Appeal before this Court, which was subsequently transferred to the District Court, Junagadh and renumbered as Regular Civil Appeal No. 119 of 2005. That by the impugned Judgement and Order / decree, the learned Principal District Judge, Junagadh has dismissed the said appeal confirming the judgement and decree passed by the learned trial court awarding compensation of Rs.84,200/- with interest at the rate of 12% per annum, to the plaintiffs. Being aggrieved by and

dissatisfied with the judgement and decrees / orders passed by both the courts below, appellants herein – original defendants have preferred present Second Appeal under section 100 of the Code of Civil Procedure.

3.00. Present Second Appeal came to be admitted on 7/3/2008 by the learned Single Judge of this Court for determination of the following substantial questions of law :-

- (1) whether the appellant – Government could be made liable either under the provisions of law or the Statute or under the common liability law under the General Law of Torts to pay the compensation?;
- (2) whether the Government is liable to pay the compensation on the ground of negligence over and above the payment as per the Government Resolution providing for ex-gratia payment? and
- (3) whether the liability could be fastened on the Government for such an accidental death of human life by assault by wildlife/animal when, on one hand, the liability is cast upon the Government to preserve the wildlife under the various laws like Wildlife Protection Act, and at the same time, competing claim of the citizen under Article 21 of Right to Life would oblige the Government to make the payment of compensation as an absolute/strict liability if at all?

4.00. Mr.Pranav Dave, learned Assistant Government Pleader appearing on behalf of the appellants – original defendants has vehemently submitted that both the courts below have materially erred in awarding compensation of Rs.84,200/- to the original plaintiffs for the death of husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6, who was killed by lioness. It is submitted that as such the learned trial

court has materially erred in awarding compensation to the plaintiffs by holding that the deceased was killed by lioness due to carelessness and negligence on the part of the State. It is submitted that as such the finding given by the learned trial court confirmed by the learned appellate court, on negligence of the appellants, is absolutely perverse and based on no evidence and/or insufficient evidence. It is submitted that despite the fact that it was specifically pointed out that various guards have been deployed by the State with wireless instruments etc. facilities have been provided and even wall has been constructed surrounding the reserved forest, the learned trial court has erred in holding that there was negligence on the part of the State Government. It is submitted that despite sufficient care being taken by the State Government to protect the reserve forest as well as wild animal, if the wild animal comes out from the forest and causes injuries, by that itself it cannot be said that there was negligence on the part of the State Government. It is submitted that as such it can be said to be an accident and/or an act of God, for which State Government is not liable to pay compensation under the liability of torts. It is submitted that unless it is specifically proved by leading evidence that there was total negligence and/or carelessness on the part of the State, due to which the lioness came out from the reserved forest and caused injury, as a result of which the deceased died, State is not liable to pay compensation under the law of torts. It is further submitted by Mr.Dave, learned Assistant Government Pleader that as such in the present case the lioness came out from the reserved forest due to stone pelting by the villagers and therefore, lioness became angry and attacked on the deceased. It is submitted that as such under

the provisions of the Wild Life Protection Act, neither the Forest Officer nor any village people can cause injury to the wild animal. It is further submitted that under the aforesaid circumstances, there cannot be any liability of the State to pay compensation for the death of the son of the plaintiffs under the law of torts.

4.01. Mr.Dave, learned Assistant Government Pleader has further submitted that the learned trial court has materially erred in observing that the amount of Rs.15,000 offered by the State Government is inadequate. It is submitted that both the courts below have not properly appreciated the fact that amount of Rs.15,000 offered by the State Government was ex-gratia and providing such relief would not tantamount to admission of the liability for the death of the husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6, under the liability of torts. Therefore, it is submitted that the finding given by the learned trial court that the amount of Rs.15,000 offered by the State Government is inadequate, cannot be sustained.

4.02. Mr.Dave, learned Assistant Government Pleader has relied upon the decision of the Himachal Pradesh High Court in the case of **State of Himachal Pradesh Versus Halli Devi**, reported in **AIR 2000 H.P. 113** in support of his request to allow the present Second Appeal and quash and set aside the judgement and decree passed by the learned trial court confirmed by the learned appellate court.

4.03. Present appeal is opposed by Mr.Dakshesh Mehta, learned advocate appearing on behalf of the original plaintiffs. It is submitted that there are concurrent findings of facts given

by both the courts below in holding that the son of the plaintiff No.1 and father of the plaintiff Nos.3 to 6 died because of the attack by the lioness due to negligence and/or carelessness on the part of the State and therefore, the plaintiffs are entitled for compensation and therefore, it is requested to dismiss the present appeal.

4.04. Mr.Dakshesh Mehta, learned advocate appearing on behalf of the original plaintiffs has relied upon the decision of the Hon'ble Supreme Court in the case of **Kshitish Chandra Purkait Versus Santosh Kumar Purkait and others**, reported in **AIR 1997 S.C. 2517**, in support of his above submission.

4.05. It is further submitted by Mr.Dakshesh Mehta, learned advocate appearing on behalf of the original plaintiffs that lioness attacked on the son of the plaintiffs in the area which is outside the reserved forest and therefore, it was the duty of the State to take a great care to see that such incident may not occur. Therefore, it is submitted that the learned trial court has not committed any error in holding that the State Government is negligent and consequently awarding compensation under the law of torts to the plaintiffs, which is rightly confirmed by the learned appellate court and therefore, the impugned Judgement and Orders are not required to be interfered with.

4.06. Mr.Dakshesh Mehta, learned advocate appearing on behalf of the original plaintiffs has relied upon the decision of the Delhi High Court in the case of **Nitin Walia, minor through Vijay Pal Walia Versus Union of India**, reported in

**2001 DLT 89-223** in support of his prayer to dismiss the present Second Appeal.

4.07. Mr.Dakshesh Mehta, learned advocate appearing on behalf of the original plaintiffs has further submitted that the State Government has passed a resolution to pay a sum of Rs.15,000 to the victim, who has sustained injury due to the attack by the wild animal and therefore, the State Government has accepted the liability and therefore, the learned trial court has rightly held that the offer made by the State Government to pay Rs.15,000 is inadequate and the learned trial court has rightly decreed the suit directing the defendants to pay compensation of Rs.84,200/- to the plaintiffs for the death of the husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6.

By making above submissions and relying upon above decisions, it is requested to dismiss the present Second Appeal.

5.00. Heard the learned advocates appearing on behalf of the respective parties at length and considered the impugned Judgement and Orders passed by both the courts below as well as evidence on record from the record and proceedings received from the learned trial court.

5.01. It is true that the husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6 died due to injury caused by lioness while the deceased was going to field. It is also true that the incident has taken place outside the reserved forest area. That the State Government offered Rs.15,000 to the plaintiffs towards compensation under the Government



Resolution, by which the Government has decided to pay lump sum amount to the victim who died due to the attack by wild animal. The plaintiffs initially instituted the aforesaid suit claiming compensation of Rs.1,25,000/- under the law of torts as well as submitting that amount of Rs.15,000 offered by the State Government is inadequate. Therefore, the short question which arises for consideration is whether the plaintiffs can claim compensation under the law of torts for the death of the deceased - the husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6 who died due to the attack by the lioness and whether State Government is liable to pay such compensation under the law of torts and whether while claiming such a compensation under the law of torts, the plaintiffs are required to prove beyond reasonable doubt that the the deceased - the husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6 died due to total negligence and carelessness on the part of the State.

5.02. It cannot be disputed that in order to succeed in claiming compensation under the law of torts of the defendants, the onus is heavily upon the plaintiffs to show that the deceased died due to some act or omission or commission of the defendants. It also cannot be disputed that before holding any person liable to pay damages under the law of torts, the person claiming such compensation has to prove that he has sustained injury through wrongful act and/or omission of another.

5.03. That the learned trial court has held that the deceased - the husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6 has died due to carelessness and/or

negligence on the part of the defendants, however, considering the evidence as a whole, it appears that such a finding given by the learned trial court is absolutely perverse and is based on no evidence and is contrary to the evidence already on record. It appears that the place where the incident took place is nearer to the reserved forest declared by the State Government. It has also come on record that number of forest officers / forest guards have been appointed / deployed by the State Government / forest department with wireless facility. It has also come on record that surrounding the reserved forest, the State Government has also constructed a wall and therefore, it cannot be said that the State Government has not taken due care to see that the wild animal may not come out side the reserved forest area. In the present case attack by the lioness after coming out from the reserved forest area can be said to be an accident and/or an act of God, for which the State Government is not liable. As such the plaintiffs have miserably failed to prove the negligence and/or carelessness on the part of the defendants. While holding the issue with respect to negligence on the part of the State Government in affirmative, from the impugned judgement, it appears that the learned trial court has observed that ....“except forest guards appointed equipped with wireless sets who have to keep watch on these beats, there is no evidence pleaded on record that any precautionary action is being taken by the defendants to avoid escape of these animals and the defendants and its servants ought to have foreseen that these beasts are likely to escape from the reserved area, and if they escape from the said area, they are likely to cause damage but no precaution is made by the defendants to avoid such escape and therefore, the defendants

are liable for negligence. It is not appreciable what other precautionary measures are to be taken to avoid escape of wild animals from the reserved area. Escape of wild animal from the reserved area is a mere accident and it can be said to be act of God also for which the State Government cannot be held liable and/or responsible to pay compensation under the law of torts unless it is specifically proved that there was total negligence and/or carelessness on the part of the State Government. In the present case the plaintiffs have miserably failed to discharge their onus to show that the deceased - the husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6 died due to attack by lioness due to some act or omission and/or commission of the defendants. Under the circumstances, both the courts below have materially erred in holding that the State Government is negligent for the death of the deceased - the husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 6 and consequently liable to pay compensation of Rs.84,200/-. Now, so far as the finding given by both the courts below that amount of Rs.15,000 offered by the State Government under the Government Resolution is inadequate is concerned, it is required to be noted that as such there is no provision under the Wild Life (Protection) Act, 1972 and/or any other Act for providing reliefs to a victim of the wild animal. Under the Government Resolution, the State Government decided to grant gratuitous relief to the person who sustained injury or to the dependents of the person killed by the wild animal, defined under the Wild Life (Protection) Act, 1972 providing such a relief would not tantamount to admission of liability and therefor, when a particular amount is offered under the policy of the State Government which was purely gratuitous, inadequacy of the same is not required to be considered. The

State Government was not under an obligation to pay even such a relief. Under the circumstances, both the courts below have materially erred in entering into such a question of inadequacy of amount which has been paid by the State Government under the Government Resolution paid by way of gratuitous relief only.

5.04. As such identical question came to be considered by the Himachal Pradesh High Court in the case of **Halli Devi** (supra). In the case before the Himachal Pradesh High Court, the original plaintiff claimed damages caused to her on account of personal injuries sustained by her, caused by black bear and somewhat similar contentions were raised before the Hon'ble Himachal Pradesh High Court and in an appeal preferred by the State of Himachal Pradesh, the Himachal Pradesh High Court has allowed the said appeal and quashed and set aside the judgement and decree passed by the learned trial court by observing and holding in para 14, 25, 26 and 27 as under :-

“14. Damages, under the law, represent the pecuniary recompense recoverable by process of law, by a person who sustained an injury through the wrongful act or omission of another. “Damage” may be defined as the disadvantage which is suffered by a person as a result of the act or default of another. “Injuria” is damage which gives rise to a legal right to recompense. If the law given no remedy, there is DAMNUM ABSQUE INJURIA, that is, damage without the right to recompense. In considering the legal import of the term “damage”, it is necessary to bear in mind that the injury, for which pecuniary compensation is awarded in an action in law, may have been caused by the defendant or by anyone for

whose acts or omissions the law holds the defendant responsible and that the injury complained of may be the result of a breach of contract or tort.

25. A contention was further raised on behalf of the plaintiff that by framing the scheme Ex.DB for providing of compensation for the death or injuries caused by a wild animal, the State has in fact admitted its liability. Such liability cannot be limited and restricted to the extent of the amounts specified therein. The liability would extend to the extent of damage actually sustained.

26. There is no force in the contention of the learned counsel for the plaintiff. There is no provision under the Wild Life (Protection) Act, 1972, for providing of reliefs to a victim of wild animal. Under the scheme Ex.DB, the State Government decided to grant gratuitous relief to the persons sustaining injuries or to the defendants of the person killed by the wild animals as defined under Wild Life (Protection) Act, 1972. Providing of such reliefs would not tantamount to admission of liability.

27. In order to succeed in claiming damages under the tortious liability of the defendants, the onus was heavily on the plaintiff to show that damage, was sustained by her due to some act of omission or commission of the defendants. The plaintiff has miserably failed to discharge such onus. Therefore, the defendants cannot be held liable. The question is answered in the negative. Final order."

5.05. Now, so far as the decisions of the Hon'ble Supreme Court in the case of **Kshitish Chandra Purkait (supra)** relied upon by the learned advocate appearing on behalf of the plaintiffs with respect to jurisdiction of this Court in an appeal under section 100 of the Code of Civil Procedure is concerned,

it is required to be noted that in the present case it has been specifically found that the finding given by the learned trial court holding that the State Government is negligent and/or carelessness, is found to be perverse and/or based on no evidence and therefore, this is a fit case to interfere with the impugned Judgement and Order passed by both the courts below.

5.06. Now, so far as the reliance placed upon the decision of the Delhi High Court in the case of **Nitin Walia** (supra) is concerned, it is to be noted that on facts the said decision would not be applicable to the facts of the present case. In the case before the Delhi High Court, it was the case where injured, tendered age boy, visited zoo and the white tigress was kept inside iron bars despite there was railing, the tigress grabbed his hand through the railing and pulled it in and caused injury and to that the Delhi High Court held that as such it was the duty of the respondents to take care i.e. to protect visitors from any such mishap. In the present case as stated above, as such due care has been taken by the State and if still for whatever the reason, the wild animal comes out from the forest, unless it is established and proved that there was total negligence and/or carelessness on the part of the State due to which the wild animal came out from the reserved forest and attacked on the villagers, the State Government cannot be held liable to pay compensation / damages under the law of torts. Under the circumstances, both the courts below have materially erred in awarding compensation of Rs.84,200 to the plaintiffs.

6.00. In view of the above and for the reasons stated above, present Second Appeal succeeds. The impugned

Judgement and decree passed by the learned 6<sup>th</sup> Joint Civil Judge (S.D.), Junagadh in Special Civil Suit No. 142 of 1992 dtd.13/12/1996 as well as the impugned Judgement and Order / decree passed by the learned Principal District Judge, Junagadh in Regular Civil Appeal No.119 of 2005 dtd.31/7/2006, are hereby quashed and set aside. However, it is observed that the plaintiffs shall be entitled to a sum of Rs.15,000/- offered by the State Government under the Government Resolution and if the same is not paid to the plaintiffs, the same shall be paid to the plaintiffs immediately with interest at the rate of 12% per annum from the date of the filing of the suit till realisation. With this, present Second Appeal is allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

**[M.R. SHAH, J.]**

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