

IN THE COURT OF 2nd ADDITIONAL DISTRICT JUDGE, SRINAGAR

Case No. 17/1995
CNR No. JKSG020000361995
Date of Institution: 29-05-1986; 02-08-1995
Reserved On: 14-07-2025
Date of Order: 20-08-2025

Mohammad Yousuf Shah R/o Latter Masjid, Safa Kadal, Srinagar (Dead)

Through legal representatives

1. Mst Khatji
W/o Mohd Yousuf Shah
2. Showkat Ahmad Shah
3. Naqeeb Ahmad Shah
4. Mushtaq Ahmad Shah
5. Tahmeena
6. Zahida
Sons and daughters of Mohammad Yousuf Shah
Residents of Latter Masjid, Safa Kadal, Srinagar

....Plaintiffs

Through: Mr. Aijaz Bedar (Advocate)

Versus

1. State of Jammu & Kashmir
2. Chief Secretary Government of Jammu & Kashmir, Srinagar
3. Director General of Police, J&K, Srinagar
4. Secretary to Government, Industries and Commerce Department,
Jammu and Kashmir, Srinagar

.....Defendants

Through: Nemo

In the matter of: Suit for grant of compensation to the tune of Rs.3,84,000/- for the loss suffered by the plaintiff due to death caused to his son for lack of care and caution shown by the employees of the defendants.

Coram: Swati Gupta
U.I.D: JK-00160

JUDGMENT

1. Instant suit was initially filed before the Hon'ble High Court of Jammu & Kashmir on 29-05-1986 with the presentation of the plaint and was subsequently transferred to this Court by virtue of the Order dated 14-07-1995 issued by the Hon'ble High Court of Jammu & Kashmir, for its adjudication under law.

Pleadings

2. Through the plaint, the plaintiff (now deceased and presently being represented through his legal heirs) had pleaded that he had a son named Avis Ahmed who was twenty two years old at the time when the Government of Jammu & Kashmir had arranged an exhibition at exhibition ground, Srinagar in the month of September-

October in the year 1985 and as usual, places of entertainment had been set up within the exhibition ground. It is pleaded that admission to the exhibition ground was neither free nor unregulated and an admission fee had to be pre-paid which is always subjected to regulation by the police force of the State and also by the employees of the Department of Industries & Commerce besides personnel provided by Special Exhibition Committee set up by the State Government.

3. It is further pleaded that besides regulating the entry, the State Government is also expected to take steps for maintenance of law and order, security and safety of all who enter the exhibition and also of those who run various stalls in the exhibition. The state, as pleaded, is under obligation to ensure safety and security of every person in the State and also of visitors to the exhibition. It is further pleaded that on 13-10-1985, the son of the plaintiff was on his way inside the exhibition ground to a place of entertainment set up by the organizers after paying the fees for entry and this place of entertainment was separately fenced and was known as 'Radha Theatre' when he became the victim of a bomb blast and suffered serious injuries as a result whereof, he breathed his last on 14-10-1985 at Sher-i-Kashmir Institute of Medical Sciences, Soura, Srinagar. Police Station Shergarhi, immediately thereafter registered a case under section 307 Ranbir Panel Code and section 3 of Explosive Substances Act, wherein it was indicated that the cause of death of the plaintiff's son was due to injury caused by the blast.

4. It is further pleaded that the bomb blast was caused due to sheer negligence of those responsible for ensuring safety and security of the visitors and therefore it makes the State Government liable to pay heavy damages to the plaintiff and others found to be entitled as heirs of the deceased. It is further pleaded that the deceased son of the plaintiff was functioning as an employee in a workshop at Srinagar and was receiving wages to the extent of Rs.700/- to Rs.800/- per month and was assisting the plaintiff in maintaining his family consisting of the deceased's mother, three unmarried sisters, two elder brothers and one brother younger to him and the average age of members of his family has been sixty years and the son of the plaintiff was also expected to live upto that average age and therefore the age span and the monthly income of the deceased as on the date of his death would entitle the plaintiff and other members of the family of the deceased, a sum of Rs.3,84,000/- as minimum compensation for the

loss suffered by the plaintiff and other members of the family of the deceased due to lack of care and caution and due to negligence exhibited by the employees of the State Government with the obligatory duty of ensuring safety and security as well as the rights to live of those who visit the exhibition or places inside the exhibition arranged and set up by the State Government.

5. It is pleaded that despite the best efforts of the plaintiff to seek compensation, he has been made to run from pillar to post in search of the same and therefore the plaintiff has a cause of action to seek the same through the process of law. Plaintiff submits to have served notice in terms of section 80 CPC upon the defendants and has valued the suit for the purpose of Court fee and jurisdiction at Rs.3,84,000/-. The plaintiff has also pleaded that this Court has the jurisdiction to try the present suit and in the premise of the pleadings, has requested that a decree for an amount of Rs.3,84,000/- be granted in favor of the plaintiff and against the defendants along with costs of the suit with any other alternative relief as may be deemed fit in the facts and circumstances of the case. The plaint is duly verified on 05-05-1986 at Srinagar and bears the verification clause along with an affidavit in support thereof.
6. *Per contra*, the defendants filed their written statements on 01-03-1998 and have opposed the plaint foremost on the question of its maintainability alleging that it does not disclose any cause of action. It is the additional plea of the defendants that the suit is not cognizable as no liability can be fastened on the defendants for an occurrence which is in the nature of an incident or mishap and beyond the control of the defendants who have exercised due caution and care to maintain order at the place of occurrence.
7. On the factual side, the defendants have pleaded that the defendant no.3 arranges and permits an exhibition at exhibition ground wherein stalls are to be set up by different States and entrepreneurs and in the year 1985, a similar exhibition was organized with places of entertainment and amusement. A nominal entry fee was charged from the visitors but when the exhibition was in progress, a bomb blast took place near 'Radha Theatre' resulting in injuries to two persons who were immediately referred to the hospital for treatment and a case u/s 307 RPC and that of Explosive Substances Act was immediately registered at Police Station Shergarhi and investigation was set into motion. Meanwhile, out of the two injured persons, one

person identified as Avis Ahmed S/o Mohammad Yousuf Shah R/o Latter Masjid, Srinagar succumbed to his injuries on 14-10-1985 at Sheri Kashmir Institute of Medical Sciences, Soura, Srinagar.

8. It is pleaded that many other bomb blasts of similar nature had taken place on different places before and after the exhibitions and cases were registered and the investigation revealed the involvement of some organized militant groups of an underground organization styling itself as 'Holy War Fighters' and the Crime Branch unearthed this organization and solved all the cases registered in this regard including the present case at exhibition ground bearing FIR No.785/85 under section 302, 120-B RPC and relevant sections of Terrorists & Disruptive Activities Act, which were produced before the Courts of law. It is submitted that the entry of the exhibition was not regulated by the police forces which was deployed on duty to ensure the peaceful running of the exhibition. Moreover, the government had taken all possible steps for the maintenance of order and for safety of people and property in the exhibition ground and therefore the defendants who had exercised due care and caution to ensure peaceful running of exhibition and safety of persons and property did not incur any liability for an incident beyond their control.
9. The defendants have denied that there was any negligence on their part to maintain order within the premises and that they had taken all necessary steps to ensure the smooth running of the exhibition and to maintain order within the premises for safety of persons and property and therefore have also denied the entitlement of the plaintiff as to any compensation for the mishap resulting in the death of his son. The defendants have acknowledged the receipt of notice and have submitted that the same was disposed of, as being not tenable in law.

In the premise of the pleadings and objections to the plaint, the defendants have pleaded that the plaint be dismissed in the interest of justice.

10. Documents

The record of the file bears a certified copy of medical certificate regarding cause of death of the deceased Ovais Ahmed Shah issued by the Presiding Officer, Designated Court under Terrorists & Disruptive Activities (Prevention) Act, 1985, Kashmir province, communication bearing no. RPHQ/180/CRB dated 20-01-1987 by Additional SP to Assistant Inspector General of Police, newspaper cuttings reporting

the incident, notice dated 30-01-1986 to the Chief Secretary and the postal receipts in support thereof.

Proceedings & Background

11. It is necessary to reflect at this stage that the original plaintiff namely Mohammad Yousuf Shah expired on 20-05-1998 during the pendency of the suit and subsequently an application for bringing on record his own as well as that of the deceased's legal representatives, was preferred. The proposed legal representatives included the wife of the original plaintiff who was the mother of the deceased as well as his three brothers and two sisters. After the defendants stated they had no objection to the said application, by virtue of order dated 30-11-1998, the legal representatives as mentioned in the application, being the wife and children of the deceased original plaintiff as well as who were related to the deceased Avis Ahmed Shah as being his mother and siblings respectively, were brought on record as the plaintiffs in the present suit.
12. It is equally relevant to bring forth that the conduct of the defendants vis-à-vis their appearance and participation in the present suit had been erratic to the extent that *ex parte* proceedings were initiated against all or some of the defendants, on various occasions. These *ex parte* proceedings were also set aside by virtue of various orders upon a motion made by the defendants in this regard. Finally, on 27-05-2025, the defendants were set *ex parte* after which the file was processed for further proceedings and the said order has stayed intact at the time of passing the present judgment.
13. Before proceeding to decide the issues, it is utmost relevant to observe that the plaint reflects the name of the deceased as being Avis Ahmed but the notice dated 30-01-1986 sent by the Counsel for the plaintiff reflected the name of the deceased as being Aves Ahmed Shah whereas the communication addressed by the Additional SP, for and on behalf of Senior Superintendent of Police, Srinagar to the Assistant Inspector General of Police, Welfare, PHQ J&K reflected his name as Owais Ahmad Shah. This reflects that when the pleadings and the documents are read in juxtaposition, there is a discrepancy and variation with regard to the spellings of name of the deceased. However, keeping in view the fact that the parentage and residence particulars are not in contradiction, therefore the name Avis Ahmed, wherever it comes in contradiction

with other spellings of the name, shall be read in uniformity with the name Avis Ahmed, as mentioned in the plaint itself.

14. **Issues**

From the pleadings of the parties and the documents annexed, the following issues were framed on 27-05-1988, which are as under:

- 1) *Whether the plaintiff's son namely Avis Ahmed aged 22 years had suffered injuries due to bomb blast on 13-10-1985 in the Exhibition Ground and he died as a result of the said injuries on 14-10-1985 in Sher-i-Kashmir Institute of Medical Science, Soura, Srinagar? **OPP***
- 2) *If issue no.1 is proved in affirmative, did the bomb blast took place because due care and caution was not shown by the police personnel on duty and was there any negligence on the part of the security personnel which has consequently led to the bomb blast death of the plaintiff's son? **OPP***
- 3) *If issue no.2 is proved in affirmative, is the plaintiff entitled to get the suit amount as compensation for the loss suffered by the plaintiff and other members of his family from the defendant on account of the death of his son? **OPP***
- 4) *Was the plaintiff's son namely Avis Ahmed drawing Rs.700/- to Rs.800/- per month and what was his contribution to the family of the plaintiff? **OPP***
- 5) *Is the suit liable to be dismissed for the plaintiff has not paid the requisite Court fee? **OPD***
- 6) *Was the accident of 13-10-1985 beyond the control of the defendants and had they taken due care and caution to maintain order as the place of occurrence? **OPD***
- 7) *Relief*

15. Out of the seven issues framed, issue no.5 was treated as a preliminary issue. However, since the issue pertained to the lack of requisite Court fee, the proceedings on record bring forth that an application was filed by the plaintiff through Counsel on 10-11-1997 for depositing an amount of Rs.812.50/- as the deficient Court fee. The requisite Court fee was accordingly annexed in the form of stamp papers of the like amount thereby curing the defect and as such the issue no.5 was settled in the light of the deposit of the requisite and deficient Court fee.

16. In so far as the issues of fact were concerned, the plaintiff was directed to lead evidence and accordingly PWs Farooq Ahmad Reshi, Fayaz Ahma Reshi, Ghulam Mohammad Shah, Haji Bashir Ahmad Bhat and Naqeeb Ahmad Shah were produced in the witness box as plaintiff evidence.

Plaintiffs' Evidence

17. A brief summary of the evidence produced by the plaintiff/plaintiffs is reproduced as under:

- a. **PW-1 Farooq Ahmad Reshi S/o Gul Mohammad Reshi R/o Kehar Singh R/o Khana Paristan Safa Kadal, Srinagar.** The evidence of the witness was recorded on 18-05-1997. He has deposed that Khana Paristan is situated near Latter Masjid Safa Kadal. He knows the deceased plaintiff and his children. On 13-10-1985, a blast occurred at exhibition ground and Avis Ahmed received grievous injuries and he was shifted to Medical Institute, Soura and he succumbed to his injuries in the morning of 14-10-1985. He knew the deceased who was 22 years old at the time of the incident. The exhibition was being organized by the police and the staff of the exhibition was also present. The deponent used to visit the exhibition ground and a ticket was necessary for entry. The police used to conduct frisking of the visitors. The blast occurred outside one stall where music program was being conducted. Avis Ahmed was working as a mechanic with Ghulam Qadir Rather and was receiving Rs.700-800 per month which he used to give to his father. The exhibition is run by the Government but the responsibility for safety is that of the police. The blast took place because of the negligence of the Government and the police. The stall was bound by wire and if the police had taken due responsibility, the bomb blast would not have taken place. As a result of the death of the deceased, his parents suffered huge loss and they were in a state of shock. No compensation was given by any department of the Government to the family of the deceased. The father of the deceased went to many departments for relief but nobody helped him. The average age of death of family members of the deceased's family is 70/75 years. Mohammad Yousuf Shah has expired and the suit is being contested by his legal representatives and if any compensation is given, the mother, brother

and sister of the deceased are entitled to it. The bomb blast took place at 08:45 PM and the deponent was also present in the exhibition ground on that day.

In his cross-examination, he has deposed that he did not have any shop in the exhibition ground when the incident occurred nor he runs any shop as on date. He was also frisked along with other people at the time of entry to the exhibition ground. He does not know that if there was any security towards the secretariat gate. It is probable that 10/20 police personnel were performing their duty at the gate. When the deceased fell down, the deponent identified him. Other people were also present there who are unknown to deponent. Despite the fact the police was performing its duty, it is responsible for the bomb blast. The noise of the bomb blast was heard but it is not definite from which side it was hurled. The deceased was lifted from the spot by the police. The deceased had received injury on his head and his eyes had turned black but there was no injury on them. Fayaz Ahmad had also received injuries in the incident. There is one gate towards the dance hall and he does not know whether it was manned by any police personnel. He used to visit the house of the deceased where he was told that the departments were not helping him.

b. **Statement of PW-2 Fayaz Ahmad Reshi S/o Ghulam Qadir Reshi R/o Safa**

Kadal: The evidence of the witness was recorded on 08-11-1999. He has deposed that he knows the plaintiff and his legal representatives who are his neighbors. The plaintiff Mohammad Yousuf Shah has expired. At about 08:45 PM on 13-10-1985, a blast took place at exhibition ground, Srinagar. He had also gone to see the exhibition after purchasing a ticket and after being checked. All the visitors were checked by the security. When the deponent went inside, the blast took place at Radha Theatre and he was also present there at that time. A song/dance program was being conducted there. This theatre was issuing separate tickets and was fenced. Avis Ahmed was injured in the blast who is the son of Mohammad Yousuf Shah. He was taken to Soura Medical Institute where he expired on the next day. His age at that time would have been between 18-20 years and he worked as a mechanic under

Ghulam Qadir. He was earning about Rs.700-800 per month and he was giving this amount to his father. He was unmarried. At the time of his death, he was survived by his parents, three brothers and two sisters who were unmarried at that time. There was checking at both the gates and it was walled. Nobody was permitted to enter it without permission. The plaintiff should get compensation from the Government. Because of his death, his family suffered a loss since he was maintaining it.

In his cross examination, he has stated that he was accompanied with Avis Ahmed. The theatre was closed although one door was open. The police was performing its duty satisfactorily. There was security inside theatre which was also conducting checking. He does not have knowledge from which side the blast occurred and who committed it. He is not related to the plaintiff but has friendly relations with them. He has no information whether any other person was injured in the bomb blast. He does not know the reason whether the bomb blast occurred because of the negligence of police or because of some other reason. It is correct that if there would have been proper checking and no blast have taken place the death could not have taken place.

c. **Statement of PW-3 Ghulam Mohammad Shah S/o Abdul Ahad Shah R/o**

Latter Masjid Safa Kadal. The evidence of the witness was recorded on 11-03-2003. He has deposed that he knows the plaintiff who is his neighbor and also the deceased who was aged 22 years at the time of the incident which occurred on 07-10-1950. An exhibition had been arranged by the Government in exhibition ground. He also purchased a ticket and went inside. The police was permitting entry after frisking. There was a blast outside the hall named Radha Theatre where many people received injury. He went home and later learnt in the evening that Avis Ahmed was missing. He had heard that Avis Ahmed had received injuries in his head during the incident. The deceased was a trained mechanic and was earning about Rs.2,000/- per month. The police used to guard the exhibition ground and entry was permitted only after checking.

The witness was not cross-examined during trial. Since the witness was not cross-examined, therefore his evidence cannot be appreciated for the purpose of adjudication.

d. **Statement of PW-4 Haji Bashir Ahmad Bhat S/o Mohammad Sidiq Bhat**

R/o Latter Masjid Safa Kadal: The evidence of the witness was recorded on 16-06-2008. He has deposed that he knows the plaintiff as well as the deceased who was 22 years old. He died because of blast injuries in October 1985 at Radha Theatre in the exhibition ground. The exhibition had been organized by the department of Industries & Commerce. A ticket had to be procured for entry to the exhibition ground. Another ticket had to be purchased if anybody wanted to go to Radha Theatre and complete checking and frisking was done by the police. The theatre staff also used to do checking. At the time of blast, the deponent was at his home where he heard that the deceased had been shifted to Soura hospital. He also visited the hospital where he saw that the backside of the skull of the deceased had been completely damaged. The dead body was handed over after the police formalities were completed. The deceased was a trained mechanic and was taking care of his family.

In his cross examination, he has stated that he knows the deceased from his childhood and is his neighbor but not related to him. He was also thoroughly checked on the day of the incident and there was heavy police deployment. The blast took place inside the theatre. Only the deceased has died whereas the others had received injuries. He did not inform the police because he was not present on the spot at the time of the incident. The deceased was unmarried and was survived by his mother and his siblings.

e. **Statement of PW-5 Nageeb Ahmad Shah S/o Mohammad Yousuf Shah R/o**

Latter Masjid Safa Kadal: The evidence of the witness was recorded on 19-07-2008. He has deposed that the deceased was his younger brother and he was aged 22 years. The deceased went to the exhibition ground for witnessing the exhibition whereas the deponent stayed home. At about 09:00 PM, he received the information that his brother had received injuries in a bomb blast at the exhibition and had been shifted to Soura hospital. He along

with his family and neighbors went to the hospital where the deceased was being operated upon and he succumbed to his injuries next day. He was working as a mechanic since the last 8-10 years and was trained. His total income was Rs.1,000-2,000 out of which his salary was Rs.800/- and the remaining amount was received as a tip. He had himself gone to the exhibition ground two days prior to the incident and the entry to the exhibition was by way of ticket. Permission for entry was only after checking. There was a theatre named Radha Theatre which had a separate ticket and entry to the theatre was also subject to checking. The exhibition ground was walled and there was one gate and entry was possible after purchase of a ticket. The blast was due to the negligence of the responsible persons. The brother of the deponent used to give Rs.800/- salary and Rs.1,200/- additional income to his father. Had the deceased been alive, he would have been earning Rs.15,000/- per month. An FIR was registered at Police Station Shergarhi. His father has expired. The plaintiff no.1 now, is his mother and the remaining plaintiffs are his siblings. The defendants are responsible for the death of the deceased because it is owing to their negligence that the incident occurred.

In his cross examination, he has stated that his father had registered a report at the Police Station. Kashmir Police was deployed at Radha Theatre who was assigned the task of checking after which entry was allowed. He had later heard that the blast had taken place and no compensation was received by them from the Government under any SRO. Some other persons had also sustained injuries but he does not know them personally. There was no BSF or CRPF deployment on the spot. The exhibition continued even after the blast.

18. This is in brief the evidence brought on record by the plaintiffs. After the evidence of the plaintiffs was closed, the defendants were called upon to lead evidence in their support. However, the defendants on account of being set *ex parte* and in the absence of any motion for setting aside *ex parte* proceedings or for leading evidence on their behalf, have not brought forth any defense evidence.

19. It is necessary at this stage however, to note that this Court had called for record of case titled '*State vs. Mohammad Altaf Qureshi and Ors*' pertaining to the Court of

TADA/POTA decided on 20-09-2007 by virtue of its docket bearing no.1448 dated 12-11-2018 pursuant to an application seeking calling of the said file made by the Ld. Counsel for the plaintiffs. The ground was that the Investigating Officer and the doctor who had issued the postmortem certificate were to be examined in the case. However, the record that has been received, made part of this file and now perused by this Court reflects that the same pertains to an FIR bearing no.325/1985 of Police Station Maisuma, Srinagar under section 3 TADA Prevention & section 120-B RPC. At the same time, it is necessary to point out that the investigation that was being carried out in the incident relevant to the present case was in FIR no.785/85 of Police Station Shergarhi, as had also been mentioned in the application moved by the plaintiffs. The record that has been so received is not relevant to the present case and therefore not required for this Court for its perusal. Accordingly, concerned section of the registry is directed to deposit the record received in FIR no.325/1985 of Police Station Maisuma, Srinagar pursuant to docket bearing no.290/Record dated 12-12-2018, immediately forthwith with the record section of the Court, under proper receipt.

20. Also, on 17-06-2025, Ld. Counsel for the plaintiffs made a statement at the Bar that notwithstanding an application made by him for calling the Investigating Officer in case titled '*State vs. Altaf Qureshi & Ors.*' in FIR no.325/1985, he does not wish to produce him as a witness on behalf of the plaintiffs and accordingly withdrew the said application as also the name of the witness for the purpose of evidence.
21. Consequently, the file was processed for final arguments for the purpose of determination of the suit.

Final Submissions

22. The Ld. Counsel for the plaintiffs has submitted that the death of the deceased took place due to the negligence of the defendants and therefore the legal representatives of the deceased are entitled for an *ex gratia* relief in the nature of compensation from the defendants for the loss of life, earning and future prospects of the deceased who was maintaining his family single-handedly. It is submitted that the State Government acting through the police agency failed in due discharge of its duties and despite expectations to take steps for maintenance of law and order, security and safety of all the visitors to the exhibition, they failed to ensure the same resulting in the bomb blast. It is also urged that a case was registered under section 307 RPC and section 3

of the Explosives Substances Act and the defendants are responsible for the incident since all the responsibility for regulating entry into the exhibition ground lay with them. It is urged that the average age of family members of the deceased is 60-70 years and the deceased, if not killed in the bomb blast, would have also lived upto the said age. In the premise of the submission made, it is requested that a decree for an amount of Rs.3,84,000/- along with costs of the suit be granted in favor of the plaintiff.

23. On the contrary, the defendants have been set *ex parte* and therefore are unrepresented for the purpose of submissions and settlement of issues.

Settlement of Issues.

24. The first issue that was framed vide order dated 27-05-1988, reads as under:

Issue No.1: *Whether the plaintiff's son namely Avis Ahmed aged 22 years had suffered injuries due to bomb blast on 13-10-1985 in the Exhibition Ground and he died as a result of the said injuries on 14-10-1985 in Sher-i-Kashmir Institute of Medical Science, Soura, Srinagar? (OPP)*

25. The onus of proving this issue is on the plaintiffs who were required to prove that the deceased sustained injuries because of the bomb blast on 13-10-1985 and died on 14-10-1985 because of the said injuries. Adverting to the issue, the averments contained in the plaint put forth that the death of the deceased took place on 14-10-1985 as a result of injuries sustained in a bomb blast on 13-10-1985 at a stall named as 'Radha Theatre' at exhibition ground, Srinagar. The plaint also reflects that the age of the deceased at the time of the death was 22 years and that he succumbed to his injuries at Sher-i-Kashmir Institute of Medical Sciences, Soura the very next day i.e. on 14-10-1985. The pleadings to this effect are substantiated foremost by the medical certificate reflecting the cause of death that has been placed on record. The medical certificate reflects the date of death as being 14-10-1985, with cause of death being shown as severe head injury, cerebral contusion and sudden cardiac respiratory arrest with a history of the deceased sustaining blast injuries. In fact, the communication that has been sent by Additional SP for Senior Superintendent of Police, Srinagar to Assistant Inspector General of Police, Welfare, PHQ, J&K, Jammu also makes a mention, having the effect of an admission being made by the defendants, that the investigation *prima facie* conducted, established that the accused person, as named in

the FIR bearing No.785/1985 under section 3 of Terrorist and Disruptive Practices Act and sections 302, 120-B RPC, had been involved in a bomb blast at exhibition ground near Radha Theatre on 13-10-1985 resulting in damage and injury to one Avis Ahmad Shah S/o Mohammad Yousuf Shah R/o Latter Masjid Safa Kadal, Srinagar (the deceased herein) who later on succumbed to his injuries on 14-10-1985 which is also substantiated by the testimonies of the witnesses produced from the plaintiff side. The witnesses including PW-1, PW-2, PW-4 and PW-5 have all stated that they knew the deceased and that on 13-10-1985, the blast occurred at the exhibition ground and Avis Ahmed received grievous injuries and was shifted to Medical Institute, Soura where he succumbed and expired on 14-10-1985. The witnesses who have stated that they had all visited the exhibition ground at one point or the other and specifically PW-2 Fayaz Ahmad Reshi claims to have been present at the time that the blast took place and he also claims that the deceased was injured in the said blast and was thereafter taken to Soura Medical Institute.

26. The pleadings supported by the documentary record as well as the testimonies of the witnesses produced on behalf of the plaintiff have all put forth the fact, which has remained un-rebutted, that the deceased suffered injuries due to the bomb blast on 13-10-1985 at the exhibition ground and his death took place on 14-10-1985 because of the said injuries at the time when he had been admitted at Sher-i-Kashmir Institute of Medical Sciences, Soura, Srinagar. Therefore, the issue no.1 is decided in favor of the plaintiff and against the defendant.
27. Issues No.2 & 6 pertain to the question whether the bomb blast on 13-10-1985 took place because of lack of care and caution on the part of the defendants and also due to their negligence. Both the issues are being reproduced hereunder for reference:-

Issue No.2: If issue no.1 is proved in affirmative, did the bomb blast took place because due care and caution was not shown by the police personnel on duty and was there any negligence on the part of the security personnel which has consequently led to the bomb blast death of the plaintiff's son? OPP

Issue No.6: Was the accident of 13-10-1985 beyond the control of the defendants and had they taken due care and caution to

28. The onus of proving issue no.2 is on the plaintiff whereas that of proving issue no.6 has been placed on the defendants. Through the plaint, the plaintiff has consistently pleaded that at the time of exhibition, the entry to the exhibition ground was neither free nor unregulated and in fact the entry fee was to be paid prior to entry in the exhibition ground which was further subjected to regulation by the police force and also by the employees of the department of Industries & Commerce. It is also pleaded that the maintenance of law and order and also the security of every person who visited the exhibition and of those who entered the exhibition ground as well as those who were running the stalls, was on the State Government which was expected to take requisite steps for the same. The plaintiffs have pleaded that since it was the State Government that was incharge of managing the entire process of entry and was even charging entry fee for it, it cannot escape the liability if anything happened to any of the visitors as a result of lack of due caution and care. The defendants, in their written statement have initially refused to bear any liability for an occurrence which was beyond their control, yet it has been admitted that the defendant no.3 was responsible for arranging and organizing exhibition at the exhibition ground wherein stalls had been put up by different States and entrepreneurs. It is also admitted that an entry fee was charged for entry to the exhibition ground. It is pleaded by them that the entry of the exhibition was not regulated by the police force and the Government had taken all possible steps for the maintenance of order and for the safety of people and property in the exhibition ground.
29. However, what emanates from the joint reading of the plaint and written statement is that while the plaintiffs assert that the defendants were responsible for maintaining law and order, and the defendants themselves admit that they had undertaken all possible steps for maintenance of the order and safety of the people, yet they plead that despite all due care and caution, the incident took place. This admission is being done without the defendants accepting any liability unto themselves for any mishap that occurred in the exhibition ground. Such reasoning on the part of the defendants, does not find consensus with this Court for the simple reason that if an agency or department of the Government has been enjoined the task of maintaining law and order and also security at a particular place where public is expected to arrive in

numbers and an entry fee to such public place is also being charged, then such agency or department belonging to the Government cannot shirk away from its liability and responsibility to perform the enjoined or assigned task to completion and that too with full satisfaction. Bearing in mind that it is a pleaded fact that the defendants have themselves admitted that bomb blast of similar nature had taken place at different locations, they were under an additional caution of ensuring that any such blast does not occur within the precincts of the exhibition ground where they were organizing the event and were responsible for the security and safety of the visitors in the area. The defendants cannot be permitted to say that the blast was beyond their control because in case the law and order enforcement machinery makes a statement of such nature, it projects a picture of helplessness and ineffectiveness having the overall effect of erosion of the confidence of the general public that they are being effectively safeguarded against attacks of violence.

30. Although, the evidence that has been brought on record in this regard by the plaintiffs, will not be much helpful in establishing whether the defendants were under an actual liability to ensure the safety and protection of the people and that they failed to perform their duty out of sheer lack of care and caution combined with negligence, yet the admission on the part of the defendants that they were indeed under an obligation to ensure safety, protection and security of the visitors in the exhibition ground and keeping in view the fact that the occurrence in the nature of a bomb blast is undisputed, there are cogent grounds for this Court to hold that the defendants, despite under a duty to take adequate care and caution, were negligent in the performance of their duty, as a result whereof the blast took place resulting in the loss of a precious life. As such, issues no.2 & 6 are decided in favor of the plaintiffs and against the defendants.

31. Issue no.4 pertains to the question whether the original plaintiff's son namely Avis Ahmed was drawing an amount of Rs.700/- to Rs.800/- per month and what was his contribution to his family. The issue reads as under:

Issue No.4: *If issue no.2 is proved in affirmative, is the plaintiff entitled to get the suit amount as compensation for the loss suffered by the plaintiff and other members of his family from the defendant on account of the death of his son? OPP*

32. The onus of proving this issue is on the plaintiffs and in addition to the oral submissions, reference can be drawn from the plaint and the evidence led by the plaintiffs in this regard. In paragraph no.16 of the plaint, it is specifically pleaded that the deceased was receiving wages to the extent of Rs.700/- to Rs.800/- per month. Also that, he was assisting in the maintenance of his family consisting of his then alive father, mother, three unmarried sisters, two elder brothers and one younger brother and at the time of death, he was twenty two years of age. The witnesses produced by the plaintiffs, more particularly PW-1 and PW-2, have also deposed in alignment with the pleading contained in the plaint and have stated without any ambiguity, *inter se*, that the deceased was working as a mechanic with one Ghulam Qadir Rather and was receiving Rs.700-800 per month which he used to give to his father. In addition PW-5 who is the elder brother of the deceased has deposed that the deceased was a trained mechanic with a salary of Rs.800 and was a recipient of additional income on account of tips received for his work, thereby totaling his earning at about Rs.1,000/- to Rs.2,000/- per month and he used to give all this money to his father. Therefore, there is substantial material on record to arrive at the conclusion that the deceased was earning Rs.700/- to Rs.800/- per month which he was contributing to his family for their maintenance. As such, this issue is decided in favor of the plaintiffs and against the defendants.

33. Issue no.3 pertains to the entitlement of the plaintiffs to get the suit amount as compensation subject to an affirmative finding by the Court in issue no.2 which has been already decided in favor of the plaintiffs. The issue no.3 reads as under:

Issue No.3: *If issue no.2 is proved in affirmative, is the plaintiff entitled to get the suit amount as compensation for the loss suffered by the plaintiff and other members of his family from the defendant on account of the death of his son? OPP*

34. The onus of proving this issue was on the plaintiffs. In discharge of the onus, the Ld. Counsel for the plaintiffs has submitted that the deceased himself was not involved in any subversive activities and was a mere visitor to the exhibition ground and due to the lack of care and caution by the defendants, he lost his life and is therefore his family members who are his legal representatives and have been now arrayed as plaintiffs, are entitled to the compensation in the nature of an ex

gratia relief as is the case in similar situations.

35. It is an undisputable fact that a bomb blast took place at 'Radha Theatre' in the exhibition ground on the fateful day of 13-10-1985. It is also not denied by the defendants that the deceased sustained injuries because of the bomb blast and later succumbed to his injuries on 14-10-1985 at SKIMS, Soura. In fact, this fact has been admitted by the defendants in their pleadings also. It is also nobody's case that he was involved in some terrorist or subversive activity that resulted in the loss of his life. Clearly, the cause of death, as substantiated from the medical record also is owing to the cerebral/head injuries sustained by the deceased as a result of the blast which has been caused due to the negligence of the defendants and the lack of care and caution on their part to ensure full-proof security in the area, where general public was thronging in numbers. The question therefore that arises for consideration is whether the legal representatives of the deceased are entitled to compensation in the nature of an *ex gratia* relief.

36. Article 21 of the Constitution of India guarantees the right to life as being a fundamental right of all citizens and when the life of a citizen is lost in circumstances involving violence caused due to terrorism or as a result of failure of the State machinery to provide adequate protection in a public place, the deprivation of life cannot be brushed aside and treated as a mere tragedy since the Constitutional obligation of the State administration to protect and safeguard the lives of its citizens, cannot be diluted and the administrative set-up responsible for maintaining law and order at such public place has to be answerable for any lapse of security and additionally has a duty of restitution towards the affected family. The exhibition ground is a public place where the general public is expected to visit under an unspoken assurance of safety and the State authorities including the police administration and the departments involved in the organization of the event are under an obligation to take reasonable and effective measures to ensure security of the highest grade at such public gatherings. In the present case, the deceased fell victim to an act of terror which has been caused in a public space where the State Government was under a duty to provide adequate security and the loss of his life has certainly affected his family which notably has suffered an irreparable loss. If the death was caused due to such reason, then the defendants

are vicariously liable to pay compensation in the nature of damages to the legal representatives of the deceased for the loss of his life more particularly when he was of twenty two years of age at the date of incident and was the bread earner of the family.

37. Compensation therefore in such circumstances is not merely an act of restitution or a measure of providing damages but has to be given as a remedy intended to compensate the bereaved family enabling it to withstand the financial loss caused by the death of a young earning member of the family, although it is an undeniable truth that no amount of monetary help can ever truly compensate the loss of a beloved one. In the case of ***Lata Wadhwa vs. State of Bihar (2001) 8 SCC 197***, the Hon'ble Supreme Court has emphasized the duty of the State and institutions to extend relief to victims of tragedies. Further, the Government, both at the Central and the State level, have notified various schemes providing relief to victims of terrorism and bomb blasts underlying the humanitarian necessity to provide relief and support to the bereaved families who are suffering the loss of an earning member of their families. Therefore, this Court is of the considered view that the legal representatives of the deceased who are his immediate family, are entitled to compensation and therefore their claim for compensation by the medium of the present suit, is found to be just, valid and enforceable.

38. Having arrived at the conclusion that the legal representatives of the deceased are entitled to compensation, the question for determination is the quantum of compensation to which the plaintiffs are entitled. Responding to the question of determination of quantum of compensation, the age of the deceased has been brought on record and proved by way of the evidence led by the plaintiffs as being twenty two years old at the time of the incident. Moreover, he was an earning member with a steady income of Rs.700/- to Rs.800/- per month with estimated future earning prospects estimated at Rs.700/- per month totaling Rs.1,500/- per month, making it an aggregate of Rs.18,000/- notional annual income. Applying a multiplier relevant to his age and taking into account the pain and suffering endured by the family , the plaintiffs are entitled to receive Rs.3,24,000/- from the defendants.

39. This Court cannot also remain oblivious to the fact that there has been an

inordinate delay in grant of compensation to the plaintiffs at the time of their grief and therefore award of interest must be an integral component of the compensation amount that the plaintiffs are entitled to.

Relief:

40. Accordingly, the plaintiffs are held entitled to get Rs.3,24,000/- as compensation from the defendants on account of loss of life of Avis Ahmed Shah along with an interest @8% per annum on the compensation amount, calculated from the date of institution of the suit, till the date of its actual payment. The defendants are directed to pay the compensation along with interest, as directed hereinabove, within a period of two months from the date of the present judgment. In default of payment of compensation, the defendants shall further pay interest @4% per annum over and above the interest already awarded, on the amount of compensation.

Decision

41. Accordingly, the suit is decreed in favor of the plaintiffs in the light of directions as hereinabove. Since the suit has been passed in ex parte, therefore, there shall be no order as to costs. Office to prepare decree sheet accordingly. File be consigned to record after its due compilation under rules.

Announced
20-08-2025

2nd Additional District Judge
Srinagar