

Compensation will have to be given for negligence in swimming pool | रसरंग में आपके अधिकार: स्विमिंग पूल में लापरवाही पर देना होगा मुआवजा

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Your rights in Rasrang: Compensation will have to be given for negligence in swimming pool

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With the onset of summer, swimming pools are being opened across the country. Swimming pools are certainly a means of entertainment, but they also carry serious risks, which need to be properly managed. Recent decisions of courts and consumer commissions have established important legal principles related to the responsibility of pool operators under consumer protection laws.

duty of care

Swimming pool operators have a duty to exercise basic caution towards all users. In *Kerala Tourism Development Corporation Ltd. v. Deepti Singh* (2019), the Supreme Court laid down the principle that the duty of care arises from the fact that if a pool is not properly maintained and manned by trained personnel, it can become a source of potential dangers and risks. This duty extends to ensuring the safety of all users, irrespective of whether they are adept at swimming or not. In *Krishna Seth v. Vishal International Hotel*, the National Commission found that the absence of a pool attendant indicated that a guest inside the hotel was left alone in the swimming pool and thus constituted a case of negligence. Based on this, the Commission awarded compensation even though the accident occurred after the pool was closed.

Deployment of trained personnel is essential

The presence of qualified and vigilant lifeguards is vital to pool safety. In the *Kerala Tourism* case, the Supreme Court held that engaging a lifeguard as a bartender was a “clear departure from the duty to exercise caution”. In *K. M. Indoria v. District Sports Council* (2010), the Rajasthan State Commission awarded a compensation of Rs 4 lakh to the plaintiff when it found that the lifeguard “failed to perform his duties to the prescribed standards”. Similarly, in *S. Abdul Aziz v. Municipal Corporation of Hyderabad* (2004), the State Commission held that pool operators “must provide experienced and vigilant coaches and lifeguards for both swimming learners and experienced swimmers”.

Cannot resort to disclaimer

Swimming pool operators cannot resort to disclaimers to escape their liability. In *Abdul Aziz* case the Commission held that “if a fee has been charged and identity cards issued, the operator cannot require swimmers to swim at their own risk.”

Educational institutions not covered under consumer law

In *Rajendra Kumar Gupta v Virendra Swaroop Public School* (2021), the National Commission clarified that educational institutions which make swimming a part of extracurricular activities are not covered under the Consumer Protection Act. However, this exemption does not apply to commercially operated swimming pools.

post accident response

In the case of *Niranjan Nath Sharma* (2015), the National Consumer Commission underlined the importance of proper emergency protocols. The Commission observed that “if no rescue effort was made and no medical aid was given after the accident, it was a case of deficiency in service.”

Determination of compensation

Courts consider several factors while awarding compensation. In Mamta Ajmani vs New Delhi Young Men's Christian Association (2010), the National Commission awarded a compensation of Rs 5 lakh, taking into account the age, income of the victim and the mental suffering suffered by the family. Similar compensation has been awarded in other cases as well.