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Civic officer must be held liable for open manhole, says retired judge



MUMBAI: The civic ward officer should be held accountable and liable for this lapse of an open manhole in which Dr Deepak Amrapurkar died, said a recently retired Bombay high court judge, Justice V M Kanade, on Friday, hours after the body was found. Legal experts said civic administration or even officials concerned must be held personally liable for the loss due to their negligence.

"An open manhole is definitely a civil negligence even if the floods were unforeseen. The BMC is liable to pay compensation," said the former judge.

Like Justice Kanade, other legal experts say the civic administration is liable to compensate the family for the death of Amrapurkar, who never reached home after he left Bombay hospital on August 29 during the deluge. "Though the death is monumentally tragic, it can't be said the civic administration can be held criminally liable. There can be no FIR registered against officials under section 304A (death due to negligence) in this case, but it is certainly a case of civil liability, where the liability must be fixed on an officer/s concerned who then must be ordered to personally compensate from his or their pockets."

"The least the BMC could have done was to create a barricade or a signage near the dangerous spot," added Kanade. "Whether it is criminal negligence or not is debatable."

The 58-year-old doctor is believed to have fallen in to an open manhole. A short walk from Elphinstone Road to his house nearby proved to be his last. His body was discovered on Friday morning at a drain near Worli. The doctor's death has disturbed the society and highlighted the lack of civic preparedness and its "continuing negligence", said lawyers.

The BMC can't shrug its liability, said lawyer Sujay Kantawala.

A query under RTI Act in 2015 had revealed that 12 roads alone had 20 open manholes. The civic response was that the cover thefts were on the rise. But there has been no move to use technology to ensure instant alerts when a cover goes missing to replace them or place red flags.

When the administration fails to do its duty, it amounts to negligence and attracts the law of tort when a member of the public suffers as a result of such negligence.

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Gaping manholes in cities has led to deaths earlier. In 2007, the death of a boy who fell in a manhole in Kolkata too had attracted a rap from the HC there.

Meanwhile, the Indian Medical Association (IMA), Mumbai branch, passed a resolution on Friday to file a PIL over the tragic death of Dr Amrapurkar.