**IN THE HIGH COURT OF ORISSA AT CUTTACK**

W.P. (C) No. 1670 of 2011

Decided On: 11.04.2011

Appellants: **Biranchi Narayan Sahu, S/o. Late Udaynath Sahu**
**Vs.**
Respondent: **State of Orissa and Ors.**

**Hon'ble Judges/Coram:**
V. Gopala Gowda, C.J. and B.N. Mahapatra, J.

**JUDGMENT**

**B.N. Mahapatra, J.**

1. The Petitioner being the father of a female student, who was raped and murdered by a teacher in a Government School during school hours within the school premises, has filed this writ petition praying for issuance of a writ of mandamus or any other appropriate writ directing opposite party No. 1-State of Orissa, represented through the Commissioner-cum-Secretary, School and Mass Education Department, Government of Orissa, Bhubaneswar for payment of compensation of Rs. 10,00,000/- (rupees ten lakh) to the Petitioner.

2. Petitioner’s case in a nutshell is that on 30.09.2008 at about 11.30 A.M. the daughter of the Petitioner, Shibani, a student of Class-VII in the Government Project U.P. School, Nimina was found dead in the toilet of the said school with bleeding injury on her vagina. Polsara P.S. Case No. 98 dated 30.09.2008 was registered under Sections 302/376 IPC against the accused persons, who are the teachers of the said school, namely, Durga Prasad Sahu, Santha Charan Pattnaik and Biswanath Gouda on the basis of the written complaint of the Petitioner. Autopsy was conducted on the body of the deceased-student-Shibani Sahu which indicated that she was raped and murdered. The learned Sessions Judge, Ganjam-Gajapati, Berhampur vide his judgment dated 27.07.2010 convicted Santha Charan Pattnaik under Sections 302 and 376 I.P.C. and sentenced him to undergo rigorous life imprisonment for the offence under Section 302 and seven years rigorous imprisonment for the offence under Section 376 I.P.C. and to pay a fine of Rs. 10,000/- (rupees ten thousand) in default to suffer rigorous imprisonment for two years more with a direction that both the sentences shall run concurrently.

On behalf of the family of the deceased, this matter was brought to the notice of the Hon’ble Chief Minister and the Hon’ble Minister, School and Mass Education Department, the Chief Secretary, the Commissioner-cum-Secretary to School & Mass Education Department and the Secretary, Women and Child Development Department claiming inter alia to pay compensation of Rs. 10.00 lakh. But, no action has been taken in this regard by the said authorities. The said matter was also brought to the notice of the Hon’ble Chief Justice, Orissa High Court and the Chairperson, National Commission for Protection of Child Rights. The Registry of the High Court of Orissa registered the relevant letter-petition as P.I.L. No. 38/2008. The National Commission for Protection of Child Rights also treated it as a complaint. Since no relief was granted to the Petitioner, he has approached this Court with a prayer to grant the above relief.

3. Mr. Prabir Kumar Das, learned Counsel appearing on behalf of the Petitioner submits that the death of 12 year old daughter of the Petitioner due to the heinous crime of a teacher of the said school caused intense mental trauma and agony to the family of the Petitioner. The death of the only daughter of the Petitioner at such tender age is an irreparable loss to the petitioner’s family. Had the daughter of the Petitioner not died in such cruel and tragic circumstances, she would have completed her studies and after growing up as an adult she would have supported the family and served the society as a responsible citizen. The rape and murder of the deceased girl is a shocking and outrageous incident because a female student is supposed to be taught and taken care of by the teacher in a school. The rape and murder of a young girl aged about 12 years by a teacher in a school during the school hour is a heinous crime. The said incident gives a picture of failure of the State to ensure safety and dignity of a female student in the Government School resulting in violation of her right to life under Article 21 of the Constitution. The girl was under the care and custody of the Department of School & Mass Education, Government of Orissa where she was attending her classes. Therefore, the above said Department of the State Government is vicariously liable to compensate the family of the deceased for violation of constitutional right to life of the deceased by an employee of the State.

4. Learned Standing Counsel appearing on behalf of School & Mass Education Department placing reliance upon the counter affidavit submits that pursuant to pronouncement of the judgment of the learned Sessions Judge dated 27.07.2010, the accused is in the jail custody. When an appropriate forum, i.e., a Criminal Court has sufficiently punished the accused with the cooperation of all the Government Officials from bottom to top, further claim of the Petitioner for payment of compensation is without any merit and the same is liable to be rejected. The convict was appointed as a teacher under Level-V, whose immediate authority is the Block Development Officer, Polasara and the appointing authority is the District Inspector of Schools, Chhatrapur. In order to streamline the primary system of Education, Government is to issue directions and principles for maintaining discipline in the schools. It is the incumbent who has to ethically perform his/her duty for the best result of the students. If such type of heinous activity is committed by an incumbent, it is the duty of the higher Authority to initiate disciplinary proceedings as per law. In the instant case, the appointing authority has taken steps immediately and the accused teachers have been removed from the posts after following due procedure. The immediate authority, like the B.D.O., Polasara has paid an amount of Rs. 10,000/- only to the family for the occurrence, out of the Red Cross fund as compensation. Moreover, the Government also directed to all the concerned officials to take serious action against the accused persons. Thus, no authority has neglected in the duty for awarding punishment on the accused. In such a situation, the petitioner’s claim for compensation in this writ petition is baseless and unethical.

5. It is further contended that the petitioner’s daughter was a day scholar student and she was not at all a boarder student in the hostel. Therefore, she was not under the care and custody of opposite parties. Moreover, the occurrence took place outside the classroom, i.e., somewhere near a latrine which is 100 ft distance from the class room. Hence, the State Government cannot be held responsible for such occurrence. Since a writ petition has been filed in the nature of Public Interest Litigation (PIL) No. 38 of 2008 before this Court and there is also a case pending before the National Commission for Protection of Child Rights, New Delhi, for which the local administration as well as the Home Department officers have been co-operating the National Commission for adjudication of the case, this Court should not entertain the present writ petition. In case the Petitioner is aggrieved by the order passed by the learned District and Sessions Judge, he should have approached this Court by way of filing a criminal appeal or criminal revision and not by filing a writ petition claiming compensation. If the Petitioner has any grievance for the loss caused to the family on the unnatural death of his minor daughter, he should approach the appropriate court of law for compensation, but he has no locus standi to file the present writ petition seeking a direction for compensation. Concluding his argument learned Standing Counsel prays for dismissal of the writ petition.

6. On the rival contentions advanced by the parties, the questions that fall for consideration by this Court are as under:

(i) Whether in the facts and circumstances, the Petitioner is entitled to any compensation for rape and murder of his minor daughter by a school teacher in the school premises during the school hours?

(ii) If the first question is in affirmative, then what should be the amount of compensation?

(iii) What order?

7. To deal with question No. (i), it is felt necessary to refer to Article 21 of the Constitution which speaks of protection of life and personal liberty. Article 21 is one of the fundamental rights guaranteed under Part-III of the Constitution which is reproduced below:

21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.

Thus, one of the fundamental rights guaranteed to a person under the Constitution is protection of life which the State is bound to provide.

The apex Court in the case of State of M.P. v. Kedia Leather and Liquor Ltd. and Ors.   : (2003) 7 SCC 389, held that environmental, ecological, air and water pollution amount to violation of the right to life assured by Article 21 of the Constitution of India. Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.

Another fundamental right under Article 21-A is that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

In the instant case, the undisputed facts are that the petitioner’s minor daughter, who then aged about 12 years old and studying in Class-VII, was raped and murdered by a teacher of the Government school during school hour and in the school premises.

8. In view of the aforesaid two fundamental rights as enshrined in Part-III of the Constitution, the stand of opposite party-State that the State is not responsible for the death of a girl student of 12 years, who was studying in Class-VII and was raped and murdered by the school teacher in school premises, is really unfortunate. For the same reason, the stand of the State that the writ petition filed by the Petitioner claiming compensation is not entertainable by this Court is also not sustainable in law. The State is liable for tortious act committed by its employees in the course of their employment.

9. Needless to say "school is a temple of learning". It is the prime duty of the State to appoint persons of high moral character as teachers in the Schools. The State is also liable to protect the life of the children studying in schools and ensure their education with dignity. Since the heinous, barbaric and inhuman act has been committed by the teacher of a government School, it would be appropriate to hold that this case is governed by the legal maxim "respondeat superior" and thus the State is liable for wrong done by its teacher.

10. The apex Court in the case of Rudul Sah v. State of Bihar and Anr.   : AIR 1983 SC 1086, observed that in appropriate cases, the Court discharging constitutional duties can pass orders for payment of money in the nature of compensation consequent upon deprivation of a fundamental right to life and liberty of a person as State must repair the damage done by its officers to such person’s right.

In Kumari Smt. v. State of Tamil Nadu and Ors.   : AIR 1992 SC 2069, the apex Court overruling the decision of the High Court of Tamil Nadu observed that the writ jurisdiction under Article 226 of the Constitution of India can be invoked by the Writ Court for awarding compensation to a victim, who suffered due to negligence of the State or its functionaries. In that case six years’ old child had fallen down in the uncovered sewerage tank. The High Court refused to entertain the claim of compensation in a writ petition under Article 226of the Constitution, but the Apex Court directed the State to pay compensation.

The apex Court in the case of State of Rajasthan v. Mst. Vidhyawati   : AIR 1962 SC 933, held as under:

Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such, as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of East India Company, the sovereign has been held liable to be sued in tort or in contract, and the common law immunity never operated in India....

11. In view of the above, the Petitioner, who is the father of the deceased girl, is entitled to compensation for the death of his child and the opposite party-State is liable to pay such compensation to the Petitioner.

12. The question No. (ii) relates to the quantum of compensation to which the Petitioner is entitled to get from the Government. In the present case, the deceased girl was the only daughter of the Petitioner. The petitioner’s family includes his wife and two younger sons. Had the girl not died, she would have completed her studies and would have supported her family which is very common in the present days. It is true that loss of child to the parents is irrecoverable and no amount of money could compensate the parents so also the other surviving members of the family. Now-a-days our society experiences that the daughters are more affectionate towards the parents and performing better service in different walks of life.

13. At this juncture, it will be profitable to refer to some of the judicial pronouncements of the apex Court as well as this Court. In the case of Lata Wadhwa and Ors. v. State of Bihar and Ors.   : (2001) 8 SCC 197, the apex Court at paragraph-11 of the judgment has held that:

11. So far as the award of compensation in case of children is concerned, Shri Justice Chandrachud has divided them into two groups, the first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs. 50,000 has been held to be payable by way of compensation, to which the conventional figure of Rs 25,000 has been added and as such to the heirs of the 14 children, a consolidated sum of Rs. 75,000 each, has been awarded. So far as the children in the age group of 10 to 15 years, there are 10 such children who died on the fateful day and having found their contribution to the family at Rs. 12,000 per annum, 11 multiplier has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs. 25,000 has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs. 1,57,000 each. In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child’s lifetime. But this will not necessarily bar the parents’ claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of Taff Vale Rly. v. Jenkins and Lord Atkinson said thus:

all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact -- there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and, second, that he or she contributed to the support of the Plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can, I think, be drawn from circumstances other than and different from them.

At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. There are several decided cases on this point, providing the guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not adduced any materials on the reasonable expectation of pecuniary benefits, which the parents expected. In case of a bright and healthy boy, his performances in the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety child and bad student, but as has been stated earlier, not an iota of material was produced before Shri Justice Chandrachud to enable him to arrive at a just compensation in such cases and, therefore, he has determined the same on an approximation. Mr. Nariman, appearing for TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made is grossly inadequate. Loss of a child to the parents is irrecoupable, and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well-placed officials of Tata Iron and Steel Company, and on considering the submission of Mr. Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs. 1.5 lakhs, to which the conventional figure of Rs. 50,000 should be added and thus the total amount in each case would be Rs 2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. TISCO itself has a tradition that every employee can get one of his children employed in the Company. Having regard to these facts, in their case, the contribution of Rs. 12,000 per annum appears to us to be on the lower side and in our considered opinion, the contribution should be Rs 24,000 and instead of 11 multiplier, the appropriate multiplier would be 15. Therefore, the compensation, so calculated on the aforesaid basis should be worked out to Rs. 3.60 lakhs, to which an additional sum of Rs. 50,000 has to be added, thus making the total amount payable at Rs. 4.10 lakhs for each of the claimants of the aforesaid deceased children.

14. This Court in the cases of Guri Behera and Ors. v. Divisional Railway Manager, East Coast Railway Khurda Road Jatani and Ors. in W.P.(C) Nos. 3214 of 2010, 1455 of 2008 and 1456 of 2008 (disposed of on 10.02.2011), while deciding the aforesaid writ Petitions filed by the fathers of the deceased children, who died on account of railway accident awarded compensation of Rs. 3,50,000/- to each one of the petitioners and Rs. 5.00 lakh to the injured claimant with interest @ 7% per annum on the compensation amount from the date of claim made with the opposite parties till the date of realization.

15. Keeping in view the factual background of the case and the future prospects of the deceased-girl as well as her prospective loss of earning to the family, we are of the opinion that a consolidated compensation of Rs. 4.00 lakhs (rupees four lakhs) should be paid to the parents of the deceased-girl, who became victim of such gruesome murder. We order accordingly. Opposite party No. 1 is directed to make payment of the above amount of compensation to the parents of deceased Shibani within four weeks from the date of receipt of a certified copy of this judgment. The amount awarded shall be shared equally between the parents, and half of their share amount may be kept in fixed deposit in any of the Nationalized Bank, for a period of five years. If that amount is required to meet any urgent need of the family the same may be withdrawn by filing an application before this Court for grant of such permission.

16. In the result, the writ petition is allowed to the extent indicated above.