
(2010) 08 MAD CK 0514

In the Madras High Court

Case No : Writ Petition (MD) No. 6999 of 2006 and M.P. (MD) No. 1 of 2006

A. Sunitha

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1)

Citation : (2010) 08 MAD CK 0514

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : P. Senthur Pandian, for the Appellant; Pala Ramasamy, Spl.
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—Wife of the deceased, a remand prisoner, who died in the prison, where he was confined following an order of the learned Magistrate to detain him in custody, in relation to Crime No. 234 of 1996, on the file of the Eraniel Police Station, Kanyakumari District, as pre-trial prisoner No. 1141/96, has filed the writ petition seeking compensation of a sum of Rs. 3,00,000/- for her husband's death, on 22.05.1996, due to fall of a wall of the kitchen inside the jail.

2. According to her, on 22.05.1996, at 20.00 hours, a tree fell inside the jail on the wall and due to the defective structure, the wall collapsed and fell on her husband and that he was crushed to death. The deceased was neither negligent nor was the cause for the accident. According to her, the accident had occurred due to the improper maintenance of the Prison, including the wall, which collapsed due to fall of a tree and the petitioner, who lost her husband ought to have been adequately compensated. According to her, though the Government have paid an Exgratia of Rs. 15,000/- from the Hon'ble Chief Minister Public Relief Fund, the said amount is inadequate, considering the dependency, and unable to maintain her two minor school going children. It is also her contention

that due to premature death of her husband at the age of 36 years, she is in inexplicable agony and financial constraint. Though, the petitioner has sent a legal notice dated 22.12.2005, to the respondents to pay a just and reasonable compensation, the same has not been responded and therefore, the petitioner is constrained to prefer this present writ petition for the relief stated supra.

3. Taking this Court through the contents of the First Information Report in Crime No. 111 of 1996, dated 22.5.1996, the telegrams addressed to the petitioner by the Superintendent of Central Prison, the Postmortem Certificate and the Government Order in G.O. Ms. No. 910/Public L&O E/97, dated 28.07.1997, by which an Exgratia amount of Rs. 15,000/- was paid under the Hon'ble Chief Minister Public Relief Fund, learned Counsel for the petitioner submitted that when the death of the petitioner's husband due to the fall of a tree, inside the prison has been admitted by the respondents, they have a duty to pay a just and reasonable compensation to the victim. Placing reliance on the decisions in Central Institute of Fisheries Education v. Janavadi Gen. Kamgar Mazdoor Union and Ors. reported in AIR 2000 SCW 4915 , and Tmt. Chellammal alias chellam and Anr. v. State of Tamil Nadu and Ors. Reported in (2000 (2) T.L.N.J.364), learned Counsel for the petitioner attempted to project a case, as if it was a custodial death and prayed for a direction to the respondents to pay adequate compensation.

4. Per contra, based on the counter affidavit filed by the Superintendent of Central Prison, Central Jail, Palayamkottai, Mr. Pala Ramasamy, learned Special Government Pleader appearing for the respondents, submitted that the petitioner's husband R. Doss was remanded by the learned Judicial Magistrate, Eraniel, in Crime No. 234 of 1996, u/s 4(1)(a) of Tamilnadu Prohibition Act, and was detained in the New Block, situated in the main Prison from 18.04.1996. On 22.05.1996, the petitioner's husband and three persons were taken to the main kitchen by the Block Warder. While they were waiting in the dining hall for taking lunch, nearer to the kitchen, an unprecedented Hurricane and Storm surrounded the area, at around 3.45 p.m., to 4.15 p.m., and due to this natural calamity, a number of trees in and around the Prison were uprooted. A big Neem tree standing in front of the dining hall smashed the roof completely. All the prisoners, who were waiting in the dining hall for taking lunch, ran to safer places. But, unfortunately, the petitioner's husband sustained grievous injuries by the ruins of the roof. He was immediately rushed to Tirunelveli Medical College Hospital for emergency treatment but he was declared as dead. The matter was informed to the petitioner.

5. Learned Counsel for the respondents further submitted that the Revenue Divisional Officer, Tirunelveli, was requested to conduct an inquest. Accordingly, he conducted the inquest on 23.05.1996, and the body was handed over to the relatives. The enquiry and inquest reports were sent to the Government by the District Collector, Tirunelveli, vide letter dated 16.12.1996. The Government, after careful consideration of the enquiry report of the District Collector,

Tirunelveli, decided to accept the finding of the Enquiry Officer, as recommended by the District Collector, Tirunelveli that the remand prisoner died due to natural calamity at Palayamkottai Central Prison on 22.05.1996 and accordingly, decided to drop further action on the matter vide Government letter No. 5661/LOE/96, dated 28.07.1997.

6. Considering the death due to fall of the ruins of the roof, the Government granted Rs. 15,000/- from the Hon'ble Chief Minister Public Relief Fund, to the family of the victim viz., the petitioner, vide G.O.910/Public L&O E/97, dated 28.07.1997. In the above said circumstances, he submitted that as accident had occurred due to natural calamity, payment of compensation by the Government, as requested by the petitioner does not arise. He further submitted that the case laws relied on by the petitioner are not applicable to the facts of this case, as it was not a custodial violence. For the above said reasons, he prayed for dismissal of the writ petition.

7. Heard the learned Counsel appearing for the parties and perused the materials available on record.

8. There is no dispute that the petitioner's husband was a remand prisoner on the fateful day. The contention that the husband of the petitioner died due to custodial violence and that he entitled to compensation is libel to be rejected, in view of the documents, such as the First Information Report, the Report of the Revenue Divisional Officer, Tirunelveli and G.O. Ms. No. 910/Public L&O E/97, dated 28.07.1997, by which the Government have ordered Exgratia of Rs. 15,000/-, which clearly shows that there was no case of torture. The finding of the respondents and the consequential Government Order have not been challenged. Even the averments of the supporting affidavit to this writ petition are only to the effect that the death had occurred only due to fall of a tree on the roof of the kitchen inside the prison.

9. In Ramesh Kumar Nayak Vs. Union of India (UOI) and Others, , wherein a wall encompassing a General Post Office, Cuttack, collapsed. According to the petitioner therein, when he was passing by the side of the wall, a portion of the wall fell on him, and he sustained injuries. He made a claim of Rs. 1 lakh as damages from the Union of India, the Chief Post Master General of the State, the Senior Superintendent of Post Offices and the Post Master of the concerned Post Office, on the ground that due and proper care was not taken regarding maintenance of the wall, and on account of such negligence, he sustained serious injuries, hospitalised for a pretty long time, his left leg was severely fractured and his right leg was also injured. He further submitted that though the residents of the nearby place had many times requested the authorities for effecting repairs to the wall which was in a precarious stage and was on the verge of collapse, with apprehension of damage to life and property, the authorities turned a deaf ear to the same. Opposing the relief, the opposite party therein though accepted that the wall had collapsed, attributed to the same to natural calamity. A plea was also taken to the effect that there was no material to show

that the petitioner sustained injuries. It was further stated that there was torrential rain on 29.8.1991, and due to such rain, it was not possible for anybody to come out.

10. The contention that local people had requested the authorities for repair the compound wall was also denied. Preliminary objection regarding the maintainability of the writ petition was also raised. As there was no dispute regarding the collapse of wall, the Division Bench of Orissa High Court headed by Hon"ble Mr. Justice A. Pasayat, as he then was, disallowed the objection while adjudicating the claim.

11. On the facts of the above case, the Division Bench observed that it was not in dispute that the protection wall was put up by the opposite parties for protection of the property of the Post Office. Therefore, it was duty bound to ensure the safety of the wall, and to see that it in no manner endangers any property or person. While considering the contention of the opposite party that the wall was in good condition, the Division Bench further observed that if the wall was in good condition as alleged, it would not have collapsed for a length of about 30 feet as acceptedly happened. Therefore, the Court found that there was inaction on the part of the opposite party to maintain the wall in a good condition, and on the above facts held that the opposite parties were liable for payment of compensation.

12. In the above reported case, going through the discharge certificate, the Division bench found that the appellant therein was injured and hospitalised for a period of one week and there was a compound fracture of fibula on the left side and considering the nature of injuries, awarded a compensation of Rs. 15,000/-.

13. Reverting back the facts of the present case, even as per the version of the Superintendent of Central Jail, Palayamkottai, Tirunelveli, on account of the storm, a number of trees in and around the Prison were uprooted and a big Neem tree standing in front of the dining hall, adjacent to the main kitchen of the Prison, had fallen on the roof of the dining hall smashing the roof completely. When the deceased was waiting along with others, he would not have expected the sudden fall of the ruins of the roof top on his body smashing him to death. Judicial notice can also be taken that most of the jails in Tamil Nadu have been constructed long back and except a few, the condition of the prisons require proper maintenance. Further, it is to be noted that there is no averment in the counter affidavit regarding the condition of the kitchen, inside the prison. In the absence of any particulars as to the age of the building, physical condition of the Kitchen at the time of fall of the roof, and its periodical maintenance, this Court is of the considered view that the building, in which there was kitchen, which was not in good condition to bear the fall of a tree. Though the victim of the accident had been granted Exgratia payment of Rs. 15,000/- from the Hon"ble Chief Minister Public Relief Fund, this Court is of the considered view that the said amount is inadequate for the reason that it is for the Government to take adequate measures to provide not only the basic amenities to the inmates of

Central Prisons, Sub-jails, but also to protect them, inside the prison. Once custody is vested with the State and the authorities, it is for them to see that adequate safeguards are taken till the completion of the period of detention, irrespective of the fact whether he is an under trial or a convict prisoner.

14. In Ramesh Kumar Nayak's case (cited supra) having regard to the nature of injuries and the period of treatment, the Division Bench awarded a compensation of Rs. 15,000/- to the injured. But in the case on hand, the victim died at a young age. Having regard to the inexplicable plight of the dependent widow and her children, this Court is inclined to grant the relief as prayed for, as value of age cannot be measured in terms of money. Hence, the writ petition is allowed. There shall be a direction to the respondents to pay a compensation of Rs. 3,00,000/- to the petitioner within a period of four months from the date of receipt of a copy of this order.