

(2015) 04 OHC CK 0045

In the Orissa High Court

Case No : Writ Petition (C) No. 4676 of 2014

Debibala Mandal and Others

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 174
Wild Life (Protection) Act, 1972 — Section 64

Citation : (2015) 5 FLT 588

Hon'ble Judges : Akshaya Kumar Rath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dr. Akshaya Kumar Rath, J.

1. The petitioners have prayed, inter alia, for a direction to the opposite parties to pay compensation for the death of one Kirti Bhusan Mandal on account of attack of a boar under Wild Life (Protection) Odisha Rules, 1974 as amended in the year 2011.

2. The case of the petitioners is that on 18.10.2013 at about 6.00 to 6.30 A.M., the petitioner No. 1 along with husband-Kirti Bhusan Mandal went to attend call of nature in the nearby village field. At that time a wild boar came and attack the husband of the petitioner No. 1. When the villagers rushed to the spot, the wild boar ran away to the forest. The husband of the petitioner No. 1 died at the spot. Thereafter Mahakalapara P.S. Case No. 10 of 2013 was registered. Post mortem was conducted on the dead body. The son of the deceased had also reported the incident to the forest authorities. It is further stated that though a representation was filed by the petitioners on 9.2.2014 for payment of compensation, but the opposite parties maintained a sphinx like silence.

3. Pursuant to issuance of notice, counter affidavit has been filed by the opposite

parties. The sum and substance of the case of the opposite parties is that the Range Officer, Gahirmatha Wildlife Range reported vide Memo No. 502 dated 18.10.2013 that he heard a crowd from the nearby village Ratpanga about attack of wild boar on Kirti Mandal of village Ratapanga, Dist.-Kendrapara. After getting the message, he rushed to the spot. On the way, he found that some villagers of Ratapanga was carrying the dead body of Kirti Mandal to the Range Office campus at Sasanpeta. He discussed with them regarding the death of Kirti Mandal and went to the spot for verification. After verification, he returned back to the Range Office and found that the local people had gathered in the office. While the discussion was going on, they scolded him and other staffs of the Range office, pelted stones, assaulted the Range Officer and other staffs. The mob forcibly confined the Range Officer. Some of them had also damaged the window grill, shutters and threatened to commit murder. Then the mob set fire to the hired vehicle kept inside the office campus. After setting fire, they rushed to the main office building of Gahirmatha Wildlife Range and damaged several articles of the office. The mob had also stolen the service revolver with 6 numbers of live cartridge by breaking the locker of Godrej almirah. After damaging the main building, the mob rushed towards the seizure yard. They had broken the doors, damaged the camp cots, solar light, seized materials and set fire to the building, departmental boat and floating jetty. Subsequently, the police personnel of Mahakalapada Police Station and APR force reached at the spot Sasanpeta and rescued the Range Officer and forest subordinate staff. It is further stated that the cause of death has been stated in the post mortem report that the injuries are ante mortem in nature. Though the Rule, 1974 provides for payment of compensation on account of death by attack of wild boar, but the report does not reveal that the death of Kirti Mandal was caused due to attack by a wild boar, so the petitioners are not entitled to any compensation.

4. Rejoinder affidavit filed by the petitioners controverting the allegations made in the counter affidavit.

5. In exercise of the powers conferred by Section 64 of the Wild Life (Protection) Act 53 of 1972, the State of Orissa promulgated the Rule namely, The Wild Life (Protection) (Orissa) Rules, 1974 (for short "the Rules"). Rule 45-AA of the Rules provides that in case of death of human beings caused by attack of Tiger, Leopard, Elephant, Crocodile, Sloth Bear, Indian Wolf locally called as "Ram Siala", Wild Boar, Gaur and Wild Dogs within a forest area or within the belt of five kilometers from the limit thereof, a compassionate payment of rupees one lakh shall be made. The aforesaid Rule was amended on 23.3.2011 enhancing the compensation amount to rupees two lakhs.

6. In an application under Article 226 of the Constitution, compensation can not be granted to the family of the victims, if the facts are undisputed. Disputed questions of facts cannot be adjudicated in the writ petition.

7. The post mortem report, vide Annexure-2, inter alia, shows that the cause of death was due to shock. All the injuries are ante mortem in nature and could

have been caused by hard blunt weapons.

The final report submitted by the Police under Section 174, Cr.P.C. shows that the cause of death was due to cardiogenic shock. It further reveals that in course of investigation, it was found that the dead body of Kirti Mandal was floating in a pond. But Mr. Choudhury, learned counsel for the petitioners drawing attention of this Court to the inquest report submitted that Kirti Mandal died due to boar attack. He further submitted that the teeth of the boar is very sharp for which an inference can be drawn from the post mortem report that Kirti Mandal died due to boar attack. The submission of Mr. Choudhury, learned counsel for the petitioners, is difficult to fathom. The post mortem report clearly reveals that the death was due to cardiogenic shock. All the injuries are ante mortem in nature and could have been caused by hard blunt weapons.

8. In view of the disputed questions of facts, it is not possible to grant compensation to the petitioners. It is open to the petitioners to establish their rights in common law forum for award of compensation.

Accordingly, the writ petition is dismissed. No costs.