

(2004) 11 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 396 and 404 of 1998

Dharanidhar Panda and Another and Muralidhar Nath and
Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 ACC 333 : (2006) ACJ 487 : AIR 2005 Ori 36 : (2004) 98
CLT 706 : (2004) 2 OLR 611

Hon'ble Judges : A.K. Patnaik, J;A.K. Parichha, J

Bench : Division Bench

Advocate : Samir Ku. Mishra, S.K. Senapati and K. Ch. Khuntia, for the
Appellant; Rangadhar Behera, for School and Mass Education Dept, for the
Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—On the date of Ganesh Puja on 6.9.1997 at about 4 P.M. two school children, namely, Dhirendra Kumar Panda and Mamata Kumari Nath, while playing with other children in Kelikadamba Primary School at Jasapada, were injured when the pillar of the boundary wall and a portion of the boundary wall of the school collapsed and subsequently died after all attempts to save their life at the SCB Medical College, Cuttack failed. The parents of the two children have filed these two Writ Petitions claiming compensation of Rs. 5 lakhs for the death of their children caused by the negligence of the school authorities.

2. Mr. Samir Kumar Mishra, Learned Counsel appearing for the petitioners, submitted that it was the duty of the school authorities to ensure safety of the children studying in the school and since the death has taken place on account of the negligence on the part of the school authorities, the Court should award compensation of Rs. 5 lakhs in favour of the parents of each of the children who died in the accident. He cited the decision of the Supreme Court in M.S. Grewal

and Another Vs. Deep Chand Sood and Others, and in Lata Wadhwa and Others Vs. State of Bihar and Others, in which the Supreme Court directed payment of compensation to the parents of children who died in accidents caused due to the negligence of the authorities.

3. Mr. R. Behera, Learned Counsel appearing for the School and Mass Education Department, on the other hand, relied on the counter-affidavit filed by the District Inspector of Schools, Jagatsinghpur in which it is stated that a good number of children along with the children of the petitioners in their childish manner standing on the grill-gate of the school started to play by swinging and climbing upon the grill-gate and perhaps due to the pressure on the pillar to which the gate was fixed, the pillar collapsed resulting in the unfortunate incident. He further submitted that Kelikadamba Primary School was being maintained by the Village Education Committee and if at all anybody is at fault, it is the Village Education Committee and not the District Inspector of Schools or any functionary of the State. Finally, he argued that the loss, if any, caused to the petitioners was due to the laches and contributory negligence of the children and the compensation of Rs. 5 lakhs cannot be granted in these cases in favour of the parents of each of the children who died in the accident.

4. In Smt. Kumari Vs. State of Tamil Nadu and others, a 6 year-old son of Srimati Kumari died after he fell into a 10 feet deep sewerage tank which was not covered with a lid and was left open. Shrimati Kumari filed a Writ Petition under Article 226 of the Constitution before the Madras High Court seeking a mandamus on the State of Tamil Nadu to pay Rs. 50,000/- as compensation to her. The High Court dismissed the Writ Petition on the ground that in a Writ Petition it was not possible to determine as to which of the respondents was negligent in leaving the sewerage tank uncovered. The Supreme Court set aside the judgment of the High Court and directed the State of Tamil Nadu to pay a compensation of Rs. 50,000/- with interest at 10 percent per annum from January, 1990 till the date of payment.

5. In M. S. Grewal and Anr. v. Deep Chand Sood and Ors. (supra), the students of the Dalhousie Public School, Badhani, Pathankot, were brought for a picnic at Tandapatanindora on the bank of river Beas and they were escorted by two teachers of the school for taking due and proper care of the students. In the post- lunch period, 14 students along with the two teachers went down the river for a considerable distance, but all of a sudden, the teachers found a ditch of about 6 to 8 feet deep and the teachers along with the children themselves fell into a great danger and while the teachers could save themselves, the students got drowned. The Supreme Court took a view that the drowning of the students was on account of the negligence of the teachers inasmuch as the children were allowed to play in a danger zone of the water without any caution or any warning being sounded and the result was drowning of 14 children. Para 16 of the judgment of the Supreme Court in the case of M.S. Grewal and Another Vs. Deep Chand Sood and Others, at Pages 162-163 is quoted herein below :

"Duty of care varies from situation to situation whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the playfield. While it is true that if the students are taken to another school "building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to a playground near a river for fun and a swim, the degree of care required stands at a much higher degree and no deviation therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for a swim by reason of popular sayings will not be a sufficient compliance. As a matter of fact the degree of care required to be taken, especially against the minor children, stands at a much higher level than adults : children need much stricter care."

In the aforesaid decision, the Supreme Court while holding that the duty of care varies from situation to situation held that a teacher had a duty to supervise the children in the playground and such duty includes sufficient exercise of diligence to know that the premises in which the children are playing are otherwise safe and secured. In the said decision, the Supreme Court further held that the degree of care required to be taken by the teachers is much more in case of minor children than the case of adults, as minor children need much stricter care.

6. In the facts of this case it is on account of the collapse of the pillar and portion of the boundary wall of the school that the two children died. Thus, their death took place due to the breach of the duty of the school authorities to ensure that the school premises in which the children play were safe in all respects. The claim for compensation for death of the two children cannot be resisted on the ground that the children were standing and climbing on the grill-gate and were swinging and the pillar of the gate along with the portion of the wall may have collapsed due to pressure because children are prone to play in this manner and it was the duty of the school authorities to ensure that the pillars of the gate and the walls are strong enough to take such pressure.

7. The next question is whether the State of Orissa can be held liable for the compensation for the death of the children. In the case of *M. S. Grewal (supra)* the Supreme Court held that the two teachers for whose neglect the 14 children died in the drowning incident in the river Beas "had escorted these students in course of their employment and since on account of their breach of duty in course of employment the fourteen children died, their employer was vicariously liable for compensation. In this case, the death of the two children occurred due to the collapse of the pillar and a portion of the boundary wall of the school due to the breach of duty of the school authorities. In the counter-affidavit of the District Inspector of Schools it is, however, stated that it is the Village Education Committee which is responsible for the maintenance of the school building. Since the responsibility of maintenance of the school building has been entrusted to the Village Education Committee by the State Government, the Village Education

Committee acts as an agent of the State Government. The State Government is thus vicariously liable for the breach of duties of Village Education Committee to take care of the children by ensuring that the school campus is safe in all respects for the children.

8. We have to next decide the quantum of compensation which the parents of each of the children entitled in the present case. In the case of *M.S. Grewal* (supra) the Supreme Court after considering Indian and English authorities on the point held :

"As noticed above, a large number of decisions were placed before this Court as regards the quantum of compensation varying between 50,000 to one lakh in regard to the unfortunate death of the young children. We do deem it fit to record that while judicial precedents undoubtedly have some relevance as regards the principles of law, but the quantum of assessment stands dependent on the fact situation of the matter before the Court, than judicial precedents. As regards the quantum, no decision as such can be taken to be of binding precedent as such, since each case has to be dealt with on its own peculiar facts and thus compensation is also to be assessed on the basis thereof, though however the same can act as guide : placement in the society, financial status differs from person to person and as such assessment would also differ. The whole issue is to be judge on the basis of the fact situation of the matter concerned though however, not on mathematical nicety."

From the aforesaid decision, it is clear that in a large number of decisions the Supreme Court has awarded compensation from Rs. 50,000/- to Rs. 1,00,000/- in the cases of unfortunate deaths of young children, but the Supreme Court has held that no decision as such can be a binding precedent and compensation has to be assessed on the facts and circumstances of each case and one guiding factor for determining compensation is the placement in the society or financial status. In the said case of *M. S. Grewal* (supra) the Supreme Court found that the school from which the students were taken for the picnic was one of the affluent schools of the country and the fee structure and other expenses are so high that it would be well neigh possible to think for admission in the school at the upper level class of the people and accordingly held that the school caters to the need of the upper strata of the society and the award of compensation of Rs. 5 lakhs by the High Court for every student who had died was justified.

9. In the case of *Lata Wadhwa* (supra) on the 150th Anniversary of Jamshedji Tata which was being celebrated on 3.3.1989 within the factory premises of Tata Iron and Steel Company Ltd. a large number of employees and their families including the small children were invited, but the organizers had not taken adequate safety measures as provided in the Factories Act and the Factories Rules. A devastating fire engulfed the panda! and the entire surrounding area and by the time the fire extinguished, a number of persons had died and the Supreme Court awarded compensation of Rs. 4.10 lakhs for each of the claimant of the deceased child taking into consideration the environment from which the

children were brought and the placement" of their parents in the Tata Iron and Steel Company Ltd.

10. Applying the aforesaid principles for determination of quantum of compensation to the facts of the present case, it appears that the Petitioner No. 1 Dharanidhar Panda in OJC No. 396 of 1998 is a village priest by profession and the Petitioner No. 2 is a housewife and the Petitioner No. 1 in Original Jurisdiction Case No. 404 of 1998 is a daily labourer and the Petitioner No. 2 is a housewife. The children of the petitioners had been admitted to a Government primary school, the fee structure of which is nominal. Considering these facts, compensation of Rs. Rs. 75,000/- {Rupees seventy thousand) with interest at the rate of 6 percent per annum on the said amount from the date of filing of the two Writ Petitions, i.e., 7.1.1998 till the date of payment to the Petitioner No. 1 in each of the Writ Petitions would be just and fair.

11. We accordingly allow and dispose of these two Writ Petitions with the aforesaid direction to be complied with within a period of three months from the date of receipt of a certified copy of this order by the Secretary, School and Mass Education Department, Government of Orissa, from the petitioners.

A.K. Parichha, J.

12. I agree.