
(2015) 11 MAN CK 0008
In the Manipur High Court
Case No : Writ Petition (Cril) No. 117 of 2009

Kshetrimayum Ongbi Bembem Devi

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Citation : (2015) 11 MAN CK 0008

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J. and N. Kotiswar Singh, J.

Bench : Division Bench

Advocate : Ph. Sanajaoba and M. Devananda, Advocates, for the Appellant; R.S. Reisang, Senior G.A., for the Respondent

Final Decision : Dismissed

Judgement

Laxmi Kanta Mohapatra, C.J.

1. The petitioner is the widow of late Kshetrimayum Raju Singh. She has filed this writ application claiming compensation of Rs. 15,84,000/- solely on the ground that her husband while in judicial custody expired due to negligence on the part of the State respondents.

2. The case of the petitioner as narrated in the writ petition is that she married late Raju Singh and out of their wedlock a girl child was born who was 2 years 8 months at the time of filing of the writ petition. Her late husband was working as a Mason and was earning Rs. 3300/- per month. Her further case is that her late husband was arrested by the police personnel in connection with FIR Case No. 15(2)08 NBL P.S. and thereafter he was detained under the National Security Act, 1980 by order dated 10.3.2008 passed by the District Magistrate, Bishnupur. While in custody, her husband died on 9.2.2009 due to negligence on the part of the State respondents and accordingly this writ application has been filed for payment of compensation.

3. The Inspector General of Police (Admn), Manipur on behalf of the respondent No. 3, has filed an affidavit in-opposition stating that the deceased husband of

the petitioner was a member of an outlaw organization called, "PREPAK". He was arrested on 26.2.2008 with recovery of one 9 mm pistol and 3 rounds of 9 mm ammunition. Because of his involvement in prejudicial activities, he was also detained under the National Security Act, 1980 by order of the District Magistrate, Bishnupur dt. 10.3.2008. It is also submitted in the affidavit in opposition that the deceased husband of the petitioner expired due to ailment and required medical care had been extended to him. Since special medical treatment was not available in the Central Jail, Sajiwa, he was also admitted to J.N. Hospital on 10.6.08 for special treatment. In course of treatment, the deceased was diagnosed as a case of Retroactive with HCV infection and cirrhosis and treatment for the said disease was also given to him. But, his condition deteriorated and he died on 9.3.2009 because of cardio respiratory failure.

From the additional affidavit filed on behalf of the respondents, it also appears that a medical Board was constituted to find out the cause of death and the report submitted by the Medical Board is quoted below:

"MINUTES OF THE STATE MEDICAL BOARD IN RESPECT OF (L) KSH. RAJU SINGH OF SINGJAMEI WANGMA BHEIGYABATI LEIKAI, H/O HUIDROM NINGOL KSHETRIMAYUM ONGBI BEMBEM DEVI HELD ON 13.10.2010.

Name:--Kshetrimayum Raju Singh Address Age 35 Signature:--Clinical Findings:--

From the records maintained in the Security Ward of J.N. Hospital and from the case records of the hospital, the following findings are found by the Medical Board.

(Late) Ksh. Raju Singh aged 35 years was admitted in the Security Ward of J.N. Hospital from Sajiwa Jail, on 10.6.2008. From the clinical findings and investigations, this patient was found to be suffering from:

(i) HIV infection

(ii) HCV infection of the Liver presented at the time of admission as Chronic liver Disease.

As for HIV infection, blood CD4 count was done and the count of 512/ml did not require the initiation of ART (Anti Retroviral Treatment) during his hospital stay and he was given Supportive treatment for HIV.

As for HCV related chronic Liver Disease, the treating Doctors advised two more blood tests e.g. HC-RNA(QT) and HCV-Genotype. One report of HCV-RNA-PCR showed 4,82,000/- ml as per record. His condition was not favourable to initiate interferon based treatment regimen in view of his poor liver Status. In spite of conservative medical management, he deteriorated from 7th February 2009 and he expired on 9th February 2009 at 8.20 A.M. in the Security Ward of J.N. Hospital. The medical record showed the cause of death as due to HIV infection with HCV-co-infection leading to cirrhosis of Liver progressing to Hepatic

Encephalopathy.

Based on the above findings, it is inferred that there was no lapse/negligence on the part of the treating doctors during the treatment of the patient.

Smt. Kshetrimayum Ongbi Bembem Devi wife of (Late) Ksh. Raju Singh was also interviewed on the same day. She was of the opinion that since her husband was arrested during his illness, there might have been negligence during his treatment by the doctors. She had no grudge against the treating doctors as such. However, she reported that she was not allowed to meet her ailing husband in the Security Ward by the guards till his death. She was informed only to take back the dead body.

4. From the above report, it appears that the deceased husband of the petitioner was suffering from HIV infection as well HCV infection of the liver. His condition was not favourable to initiate interferon base treatment. In spite of conservative management, his condition deteriorated from 7.2.2009 and ultimately he died on 9.2.2009. Cause of death is due to HIV infection with HCV-Co- infection leading to cirrhosis of Liver progressing to Hepatic Encephalopathy. From the report it appears that the petitioner had no grievance against the treating Doctors but she reported that she was not allowed to meet her husband in the Security Ward by the guard till his death.

5. The learned counsel for the petitioner disputes the medical report on the ground that the treatment given to the deceased husband of the petitioner was not the correct treatment for the ailment he was suffering from. Some documents relating to the treatment of the deceased husband of the petitioner obtained under RTI have been filed along with the additional affidavit of the petitioner.

6. The question as to whether the deceased husband of the petitioner was given correct treatment or not is a matter of dispute. On one hand the petitioner claims that the treatment given to her deceased husband was not for the ailment he was suffering from whereas the Medical Board report shows that conservative medical management was done considering the condition of the deceased husband of the petitioner but he did not improve and his condition deteriorated resulting in his death on 9.2.2009. Therefore, this disputed question of fact as to whether correct treatment was given to the deceased husband of the petitioner or not cannot be decided in a writ petition. If the report of the Medical Board is accepted, the petitioner will not be entitled to any compensation at all, her deceased husband having died because of HIV infection while in custody.

7. The learned counsel appearing for the petitioner placed reliance on a decision of the Gauhati High Court in the case of Musstt. Khamala Begum Vs. State of Assam and Others, . In the said reported case the under trial prisoner, while in custody, died under suspicious circumstances. The state respondents therein took a plea of suicide but the said plea could not be supported by material evidence. The learned single Judge held that even in the case of suicide in

judicial custody, the State and its officers cannot be absolved of their duty to protect the life of a under trial prisoner and accordingly granted compensation of Rs. 1 lakh.

The present case is completely different from that of the reported case. In the present case, undisputedly the deceased husband of the petitioner was suffering from HIV infection and also HCV infection in liver. The question is as to whether he had been given correct treatment or not. Since this is a question which is disputed by the parties, the appropriate forum for the petitioner would be to approach the civil Court, if so advised, to establish her claim that her husband had not been given correct treatment for the disease he was suffering from. In the writ jurisdiction such disputed question cannot be decided.

8. For the reasons stated above, we find no reason to allow the prayer of the petitioner in this writ application and accordingly dismiss the same. However, if the petitioner is so advised, she may approach civil court to establish her claim that her deceased husband died due to medical negligence, appropriate treatment having not been extended to him.