

(2014) 11 MAN CK 0004
In the Manipur High Court
Case No : Writ Petition (Civil) No. 118 of 2010

Rahimuddin

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 5 GLT 564

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : Bishamvor, Advocate for the Appellant; R.S. Reisang, G.A. and N. Ibotombi, Sr, Advocate for the Respondent

Judgement

N. Kotiswar Singh, J.—Heard Mr. Bishamvor, learned counsel for the petitioner. Also heard Mr. R.S. Reisang, learned G.A. for the State respondent No. 1 as well as Mr. N. Ibotombi, learned senior advocate for the PWD respondents 2 and 3.

2. The present petition has been filed by the petitioner claiming for damage amounting to Rs. 4 lakhs on account of death of the daughter of the petitioner aged about 6 years after falling down on the river through the damaged wooden hanging bridge.

3. According to the petitioner there is a wooden hanging bridge known as Litanthong constructed over the Imphal river connecting his village with Uchiwa Kabui Village. The said wooden hanging bridge was constructed in the year 1972. However, according to the petitioner, the said bridge in spite of being used extensively by the villagers, was not repaired because of which the middle portion of the said wooden bridge had broken down causing massive holes on the bridge. It has been stated that on 7.5.2009, the petitioner's wife and his deceased daughter Farida Begum while crossing the wooden hanging bridge, Farida Begum suddenly fell down into the Imphal river through the said hollow portion of the wooden bridge and was drowned in the river and her dead body could be recovered only on the next day. The death of his daughter caused a hue

and cry in the area and it was widely published in the local newspapers. According to the petitioner, her daughter Farida Begum was studying in Class-III in the Uchiwa Wangma Junior High School with good academic records. The petitioner also stated that though certain investigation was conducted by the police, nothing came out of it and the petitioner submitted an application to the Chief Engineer, Public Works Department, Manipur on 4.6.2009 for payment of ex-gratia on account of the death of his daughter. However, since there has been no response from the authorities, the petitioner has approached this Court by filing this writ petition seeking payment of Rs. 4 lakhs. It has been contended by Mr. Bishamvor, counsel for the petitioner, that the petitioner's daughter was a bright student of tender age of 6 years and she would have had a bright future had her life not been cut short so cruelly and the petitioner would be entitled compensation of at least Rs. 4 lakhs for the death of his daughter and trauma caused to him.

4. The Respondents have filed their affidavit-in-opposition. The Respondent no. 1 in the affidavit-in-opposition had contended that the said river was repaired by one contractor in 2008 and was inspected again on 30.4.2009 as a part of routine inspection and found that 3 (three) wooden deckings at the end of the bridge were found missing and a cautionary sign board was put on 2.5.2009 near the bridge and these were also found missing when the concerned Executive Engineer made a spot inquiry on 23.6.2009 after the incident. It was also contended that the hollow portion in the bridge is only 2 (two) feet away from the bank of the river and was above the ground surface and not above the water surface and therefore, it was denied that it was not possible that the said girl died after having fallen through the said hollow portion of the bridge. The Respondents no. 2 and 3 also stated in similar lines. It was further stated by the Respondents no. 2 and 3 that since the death of the girl was found by the local people on the next day from the river bank, it indicates that she might have fallen from the suspension iron rod without any protection and as such, the authorities are not liable to pay any compensation on account of the death.

5. Heard the learned counsel for the parties and perused the records.

6. It is the contention of the petitioner that the petitioner's daughter died after falling down into the river through the broken portion of the wooden suspension bridge while crossing the said bridge which was however denied by the respondents, though admitting that the bridge was broken but the said broken portion was towards the river bank and not over the water. It was also contended by the Respondents no. 2 and 3 that the daughter of the petitioner could have died while playing on the suspension iron rod of the hanging wooden bridge without any precaution. It has been therefore, contended that since certain disputed question of facts had arisen, this Court is not the appropriate forum to grant the relief claimed and the petitioner may be directed to take recourse to civil law remedy.

7. On hearing the parties and also perusal of the records, it is not in dispute that

the petitioner's daughter had died after being drowned in the river and her dead body was recovered on the next day. It is also not denied by the respondent authorities that the wooden hanging bridge was damaged and there were large holes on the bridge. What has been disputed by authorities is that the petitioner's daughter had fallen through that broken portion of the bridge which led to her death. This Court in exercise of the jurisdiction under Article 226 would not normally enter into such disputed question of facts and relegate the matter to the civil law remedy. However, before doing so, it may be required to have a closer look at the materials on record to examine whether it would be justified to adopt such a course of action. What this Court has noted is that the petitioner had annexed a document (Annexure-A/10 to the writ petition) being the extract copy of the General Diary maintained by the police of the Mayang Imphal Police Station which had investigated the incident. It has been clearly mentioned therein that one Sub-Inspector, L. Shyamkishwor Singh and an armed Police party were deputed on 3.12.2009 to enquire into the death of the petitioner's daughter and it was reported that on 7.5.2009, one baby namely Farida (7), D/o Md. Rahimuddin of Uchiwa Nastao along with her sister Thoibi Begum (30) were crossing the suspension bridge for going to the house of another relative and while crossing the bridge, the said child fell down into the river due to the broken wooden plank of the suspension bridge and she could not be traced on the day but was found on the next day by the villagers. It was also noted in the General Diary that no report was lodged by the parents as they had no knowledge of the legal procedures and as such, no case was registered but the said incident was published in the local daily and on enquiry from the local elders, the case was found to be genuine.

Though the respondent Nos. 2 and 3 had disputed the correctness of the said document, the State respondent No. 1 did not deny the same in the affidavit filed by them. Respondent Nos. 2 and 3 while denying the contents of the said document also mentioned that assuming but not admitting that such an entry had been made in the General Diary by the Mayang Imphal Police Station, the same cannot be acted upon in the eye of law as the same cannot be a part of evidence. As discussed above, even though the respondents 2 and 3 have denied the correctness of the said document, the State respondent no. 1 has not denied the same. Thus, the stand of the State respondents cannot be said to be consistent or uniform. It is also observed that the State Respondents never made any attempt to find out the veracity of the contentions of the petitioner nor of the contents of the General Diary, though the Respondents could have easy access to it. The Court is of the view that it was indeed the responsibility of the State Respondents to make an inquiry to ascertain as to how the unfortunate incident of drowning had taken place once this was brought to their notice, which however, was not done. In the affidavit-in-opposition of the Respondent no. 1 it was stated that the concerned Executive Engineer made a spot inquiry on 23.6.2009. Though it was admitted that three wooden deckings were still missing, nothing was mentioned about the manner in which the girl died. Had

the circumstances been different from what had been narrated by the petitioner, or if the authorities were not responsible they could have stated so in such an inquiry report. The authorities have not made available a copy of such spot inquiry made by the concerned Executive Engineer. Thus apart from a half hearted and formal denial, the State respondents have not come forward with any plausible explanation as to how the death of the girl was caused.

Therefore, this Court having considered the said document (extracts of the General Diary) in the light of other documents and fact of the broken bridge which has been also admitted by the respondents, this Court does not find any cogent reason to ignore the said entry in the General Diary which clearly mentions that the case was genuine. Accordingly, this Court in absence of any other alternative plausible explanation and contradictory material, would not hesitate to rely on the contents of the General Diary in the light of other supporting documents and admission of the State Respondents that there were holes on the bridge, to hold that the State respondents are liable for being negligent in maintaining the wooden bridge which contributed to the death of the petitioner's daughter, for the purpose of invoking the public law remedy. This Court has also taken into consideration the fact that the petitioner's daughter was a student and was of tender age of 6 years. Learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in Smt. Kumari Vs. State of Tamil Nadu and others, in which the Supreme Court had directed the State of Tamil Nadu to pay a sum of Rs. 50,000/- (rupees fifty thousand) as compensation on account of the death of a 6 years old child caused due to falling in "uncovered sewerage tank". Though the Madras High Court had initially dismissed the petition on the ground that the writ jurisdiction is not the appropriate forum to determine as to which authority was responsible for the negligence, the Supreme Court considering the facts and circumstances of the cases interfered with the finding of the Madras High Court and directed the State of Tamil Nadu to pay a sum of Rs. 50,000/- with interest @12% per annum. Mr. Bishamvor, Ld. Counsel relying on the said judgment has submitted that this Court can award compensation of at least Rs. 4 lakhs in favour of the petitioner.

8. In the present case, this Court is of the view that, considering the facts and circumstances of the case that the petitioner's daughter was a student of 6 years and the State was negligent in maintaining the wooden bridge and does not find any reason to disbelieve the version of the petitioner, it would meet the ends of justice, if a sum of Rs. 2 (two) lakhs is directed to be paid by the State of Manipur to the petitioner for the death caused to the petitioner's daughter which was contributed by the broken hanging bridge.

Accordingly, the writ petition is allowed with the direction to the State respondents to pay a sum of Rs. 2 (two) lakhs to the petitioner within a period of 2(two) months from today failing which it will carry interest @12% per annum from the date of judgment till date of payment. The petitioner may approach the competent civil court for enhanced compensation, if so advised.