

(2014) 09 GAU CK 0026
In the Gauhati High Court
Case No : Regular First Appeal No. 7 of 2012

Rokunga

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, 80
Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 164
Mizoram Civil Courts Act, 2005 — Section 17
Penal Code, 1860 (IPC) — Section 302

Citation : AIR 2014 Guw 179

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : M. Zothankhuma, Sr. Advocate, Lalfakawma and D. Lalrinchhani, Advocate for the Appellant; Lalsawirema, G.A., C. Lalramzauva, A.R. Malhotra and Zoramchhana, Advocate for the Respondent

Judgement

Ujjal Bhuyan, J.—Though this case was heard on 5.6.2014, learned counsel for the parties had assured the Court that they would submit written arguments within 1 (one) week but written submissions were filed only on 1.9.2014. This Bench was also not available at Aizawl since 6.6.2014. Hence, the delay in delivery of judgment. Heard Mr. Lalfakawma, learned counsel for the appellants and Mr. A.R. Malhotra, learned counsel for the respondent No. 5. Also heard Mr. Lalsawirema, learned Government Advocate, Mizoram who has appeared for respondent Nos. 1 to 4.

2. This is an appeal under Section 17 of the Mizoram Civil Courts Act, 2005 read with Order 41, Rule 1 of the Civil Procedure Code, 1908 against the judgment and order dated 29.9.2011 passed by the learned Senior Civil Judge, Aizawl Judicial District, Aizawl in Civil Suit No. 3/2001 whereby the suit instituted by respondent No. 5 was decreed by directing respondent Nos. 1 to 4 to pay to the plaintiff a sum of Rs. 13,70,000/- with simple interest @ 9% per annum from the

date of filing of the suit till realization, with further direction to respondent Nos. 1 to 4 to recover the decretal amount from the salary of the appellants.

3. Respondent No. 5 was the plaintiff who had instituted the suit whereas respondent Nos. 1 to 4 were defendant Nos. 1 to 4 in the suit. Appellants were defendant Nos. 5 and 6.

4. While proceeding to deal with the appeal, it would be apposite to refer to the pleadings and the evidence on record at the outset.

PLEADINGS:

5. Respondent No. 5 as the plaintiff had instituted Civil Suit No. 3/2001 seeking a decree for payment of compensation of Rs. 20,00,000/- with pendente lite interest @ 15 per cent per annum from the defendants. Plaintiff stated that she was suffering from mental illness and therefore had instituted the suit through her son Lalnunmawia as her next friend. She stated that her other son Vanlalnghaka was aged about 32 years at the relevant point of time. He used to earn his livelihood by carpentry work for which he had opened a furniture workshop at Thingdawl. Vanlalnghaka was the sole bread earner of the family. He used to earn about Rs. 15,000/- per month. Plaintiff's husband had divorced her long back because of her illness. Her son Vanlalnghaka was looking after her from the income earned by him from his furniture workshop.

5.1. On 31.12.1999 at about 7.30 p.m., Vanlalnghaka had gone to the house of a neighbour at Thingdawl. He was thereafter apprehended by some excise personnel who took him in their vehicle and proceeded towards Aizawl. Dead body of Vanlalnghaka was found at about 4.30 p.m. on 3.1.2000 in a place called Sethawn. Post-mortem examination was conducted at Civil Hospital, Kolasib on 4.1.2000.

5.2. Plaintiff lodged FIR before the Officer-in-Charge, Kolasib Police Station on 3.1.2000 on the basis of which Kolasib PS Case No. 1/2000 under Section 302 IPC was registered.

5.3. During investigation, two personnel belonging to the Excise Department i.e. defendant Nos. 5 and 6 (appellants herein) were arrested. Investigation prima-facie established that defendant Nos. 5 and 6 were responsible for the death of plaintiff's son. Accordingly, police submitted charge-sheet against defendant Nos. 5 and 6 before the Criminal Court. Thereafter, defendant Nos. 5 and 6 are facing trial in the Criminal Court.

5.4. Due to the sudden death of her son, who was the sole bread earner of the family, plaintiff claimed that she and her family were sustaining loss of at least Rs. 10,000/- per month. Average life expectancy being around 70 years, the deceased was expected to live for another 35 years. Accordingly, plaintiff claimed compensation of Rs. 20,00,000/-. Notice issued under Section 80 of the Civil Procedure Code remained unresponded. Hence the suit. Prayer was made for exemption from payment of court fee on the ground of poverty of the plaintiff.

6. Defendant Nos. 1 to 4 i.e. the State filed a common written statement. Stand taken in the written statement was that the appropriate authority to assess the income of the deceased was the Superintendent of Taxes, Kolasib and not the Block Development Officer (BDO). Deceased did not pay professional tax under Mizoram Professions, Trades, Callings and Employment Taxation Act, 1995. It was stated that no excise personnel was detailed by the Superintendent of Excise, Kolasib for night duty at Thingdawl and surrounding areas on the night of 31.12.1999. Only Excise Officer and Staff who were detailed for night duty on 31.12.1999 were Inspector Lalhmingliana Fanai, Officer-in-Charge, Excise Station, Kolasib and his party. They had performed their duty along with the Village Defence Party. Defendant Nos. 1 to 4 therefore had no responsibility for the alleged misconduct of defendant Nos. 5 and 6. Criminal trial was yet to be concluded. Therefore, it could not be said with any degree of certainty that Vanlalnghaka had died while he was in custody of the excise personnel (defendant Nos. 5 and 6). Since trial was going on, guilt of the accused (defendant Nos. 5 and 6) was yet to be established. Superintendent of Excise, Kolasib did not issue any warrant of arrest on 31.12.1999 for arrest of the deceased. Hence, defendant Nos. 1 to 4 could not be held liable to pay compensation for any act of omission or commission on the part of the excise personnel who acted without authorization. A technical point was also raised regarding non-deposit of court fee of Rs. 5000/- by the plaintiff since there is no provision for exemption from payment of court fee.

7. Defendant Nos. 5 and 6 in their common written statement raised preliminary objection on the point of non-payment of court fee. Locus standi of the plaintiff to institute the suit was also questioned on account of her mental illness. They stated that income certificate of the deceased was not genuine. Firstly, if the plaintiff was suffering from mental illness, she could not have assessed the income of the deceased; secondly, Block Development Officer, Thingdawl had no authority to issue an income certificate. Further, there were no materials to assess the income of the deceased as Rs. 15,000/- per month.

7.1. It was however admitted that defendant Nos. 5 and 6 had apprehended the deceased Vanlalnghaka as he was in a state of intoxication. But finding the deceased too drunk and sickly, the said defendants let him off on the outskirts of Thingdawl as they were on an errand from their officers to buy chicken. Defendant Nos. 5 and 6 had carried the deceased in their official Gypsy vehicle only for a short distance from Thingdawl village to the outskirts of Thingdawl and thereafter let him off. While defendant Nos. 5 and 6 admitted that FIR was lodged on account of death of Vanlalnghaka and that the matter was investigated upon, it was however denied that Vanlalnghaka had died while he was in the custody of defendant Nos. 5 and 6. It was asserted that Vanlalnghaka was very much alive though drunk when he was allowed to go free by them on the outskirts of Thingdawl. It was however admitted that defendant Nos. 5 and 6 were facing criminal trial as accused in the criminal case relating to the death of Vanlalnghaka; but, the said defendants contended that the charge against them

was not true and they have been falsely implicated. It was denied that defendant Nos. 5 and 6 had beaten up the deceased or that any fatal injuries were caused by them which led to the death of Vanlalnghaka. They stated that they were tortured while in police custody to make a statement that Vanlalnghaka had died due to injuries inflicted by them. Claim of the plaintiff that she was sustaining loss of Rs. 10,000/- per month was denied. Deceased was not married. His other family members including the plaintiff were not dependent upon him. The licence of the furniture workshop owned by the deceased had expired. Since he had no valid licence, he was earning income unlawfully. There was no proof that the deceased was running his furniture workshop at the time of death.

EVIDENCE:

8. Lalnunmawia, son of the plaintiff and brother of the deceased, in his examination-in-chief stated that as his mother was suffering from mental illness, she had instituted the suit through him as the next friend. Plaintiff would be about 65 years old. He stated that the deceased was his brother. The deceased used to earn his livelihood by carpentry. He had a furniture workshop at Thingdawl and used to earn about Rs. 15,000/- per month. Deceased used to look after their mother till his death from the income that he earned from the furniture workshop. On 31.12.1999 at about 7.30 p.m., the deceased had gone to the residence of his neighbour. However, he was apprehended by some excise personnel who took him away in their vehicle and proceeded towards Aizawl. Whereabouts of the deceased brother were not known until his dead body was found on 3.1.2000 at about 4.30 p.m. at a place called Sethawn. Post-mortem examination on the dead body of the deceased was conducted on 4.1.2000 in the Civil Hospital at Kolasib. Plaintiff lodged FIR before Kolasib Police Station on 3.1.2000 on the basis of which Kolasib PS Case No. 1/2000 under Section 302 IPC was registered. In the course of investigation, defendant Nos. 5 and 6 were arrested. Prima facie case against them having been well established, defendant Nos. 5 and 6 were sent up to face trial and accordingly they were facing trial. Deceased had died due to fatal injuries sustained by him from the beating of the excise personnel while he was under their custody. He further stated that because of the untimely death of Vanlalnghaka, the family had been sustaining loss of Rs. 10,000/- per month. A copy of the birth certificate of the deceased was exhibited as Exhibit-1 which shows date of birth of the deceased was 22.11.1968, meaning thereby that he was about 32 years at the time of his death. Exhibit-2 was a copy of the death certificate. Exhibit-4 was a copy of the income certificate of the deceased issued by the Block Development Officer (BDO) of Thingdawl R.D. Block who certified that from his furniture workshop, the deceased used to earn on an average Rs. 15,000/- per month. The said certificate was issued on the basis of information received from the VCP of Thingdawl as well as from the members of the family. Exhibit-5 was a copy of the post-mortem report of the deceased which was objected to by the defendants on the ground that the original was not produced. Exhibit-6 was a copy of the FIR lodged by the plaintiff which was also objected to by the defendants on similar

ground. Exhibit-7 was a copy of the charge-sheet No. 21/2000 submitted by the police in Court in connection with Kolasib PS Case No. 1/2000. This was also objected to by the defendants on the above ground.

8.1. He was cross-examined on behalf of defendant Nos. 5 and 6. In cross-examination, he stated that the deceased did not have a family. He had a furniture workshop for which the licence was valid till March 1998. He admitted that he did not produce any original in respect of those exhibits which were objected to by the defendants. He stated that the deceased was detained by defendant Nos. 5 and 6 for no reason. Subsequently, certified true copy of the charge-sheet which was issued by the Peshkar of the ADM(J), Aizawl i.e., the Criminal Court was exhibited as Exhibit-14.

8.2. In his cross-examination by the Government counsel, he stated that the plaintiff would be about 67 years old. His further statement was that he knew that defendant Nos. 5 and 6 were accused of killing his brother and that criminal case against them was going on. He asserted that monthly income of the deceased brother was about Rs. 15,000/- and loss of the family was about Rs. 10,000/- per month.

9. Albert Malsawmdawngliana, who was posted in the office of Superintendent of Police, CID/SB as Deputy Superintendent of Police (Headquarters), deposed as a witness. He stated that during the year 2000, he was posted at Kolasib as SDPO. He had conducted investigation into Kolasib RS Case No. 1/2000. As per opinion of forensic expert based on post-mortem examination, cause of death was due to head injuries and other injuries on the body of the deceased. He further stated that in the course of his investigation, he had arrested defendant Nos. 5 and 6 as they were the two excise personnel who had apprehended the deceased on the late evening of 31.12.1999. During interrogation, both of them had confessed their guilt saying that they had arrested the deceased and assaulted him using hammer and wheel wrench inside the Gypsy belonging to the Excise Department and left his body near the RTP farm. Subsequently, their statements were recorded under Section 164 Cr.P.C. before the Magistrate in which also they had confessed their guilt. Blood stain cloth of the deceased and blood sample collected from the seat rexin of the Gypsy, in which the deceased was assaulted, were sent to the Forensic Science Laboratory (FSL), Assam, Guwahati. Forensic report revealed that the blood sample collected from the seat rexin of the Gypsy tested positive for human blood which matched with the blood group of the deceased. This proved that the deceased was assaulted inside the Gypsy belonging to the Excise Department. He further stated that at the conclusion of his investigation, he found a prima facie case well established against defendant Nos. 5 and 6 under Section 302 IPC following which he submitted charge-sheet against them in the criminal Court.

9.1. The said witness was cross-examined by the counsel for defendant Nos. 5 and 6. In his cross-examination, he stated that he was the I.O. of Kolasib PS Case No. 1/2000. He denied that he had tortured defendant Nos. 5 and 6 and

had extracted their confessions under duress.

9.2. He was also cross-examined by the Government Advocate. He stated that the criminal case registered against defendant Nos. 5 and 6 was still going on in the Kolasib District Court and that he had not yet adduced evidence in connection with the said criminal case.

10. Thereafter, defendant No. 5 adduced evidence. In his examination-in-chief on affidavit, he admitted that he and defendant No. 6 had apprehended the deceased as he was in a state of intoxication. But he stated that having found the deceased too drunk, they left him on the outskirts of Thingdawl as they had to buy chicken for their officers. He stated that they had driven the deceased in the official Gypsy driven by him for a short distance from Thingdawl village to the outskirts of Thingdawl where they let the deceased go free. He denied that neither him nor defendant No. 6 had beaten the deceased. There was no question of the deceased dying because of beating and injuries allegedly inflicted upon him by them. He stated that the confessional statement made by him before the Magistrate was not voluntary.

10.1 In his cross-objection, he stated that he and defendant No. 6 had arrested the deceased on the night of 31.12.1999, further stating that he was driving the Gypsy. The deceased was arrested inside Thingdawl town. He further stated that they had arrested the deceased in the course of their duty as Excise Constable. Both he and defendant No. 6 were at that time proceeding from Kolasib to Bualpui to buy chicken for their officer as instructed by the Superintendent of Excise, Kolasib Excise Station. He admitted that although it was their duty to have taken the deceased to the Excise Station and to have registered a case against him, they had let him go because he was very drunk. Admitting that they had failed in their duty when they released the deceased after arresting him, he stated that the deceased was carried by them in the Gypsy. They had released the deceased on the outskirts of Thingdawl just before reaching the Highway Restaurant. He admitted that a criminal case was registered against them (defendant Nos. 5 and 6) by the police on account of the death of the deceased and that both of them were arrested by the police. He also admitted that he had received a copy of the charge-sheet and that the criminal trial was still pending disposal. He further admitted that the Magistrate had asked them questions and had recorded their statements. He stated that he was suspended by the Excise Department on his arrest in January 2000. But the suspension order was withdrawn sometime in September/October, 2002. Towards the end of his cross-examination, he stated that after they had arrested the deceased, instead of taking him to the Excise Station, they had proceeded towards Bualpui with him, further stating that he did not know for how long the deceased was in their custody. He did not issue any arrest memo to the deceased. Further statement made by him was that he did not move the trial Court for retraction of his confessional statement.

11. Similar statement as made by defendant No. 5 was made by defendant No. 6

in his examination-in-chief on affidavit. In his cross-examination, he stated that the Gypsy was driven by his friend i.e. defendant No. 5 on the night of 31.12.1999 when they had arrested the deceased. Ngurchungnunga, the Superintendent of Excise, Kolasib had asked them to go to Bualpui to buy chicken. He admitted that they had arrested the deceased while they were on duty because they found the deceased to be drunk. The time of arrest was between 7 p.m. to 8 p.m. Instead of taking the deceased to the Excise Station, they took him with them towards Bualpui. He stated that though he was in service for about 11 years, he was not sure whether an Excise Constable had the power to arrest a drunken man or not. He stated that the deceased was in their custody for about 30 minutes. He also stated that he did not remember as to whether they had submitted a report to their superior about the incident after they had returned from Bualpui. He also admitted that criminal case was registered against them which was still pending at the trial stage. He admitted to have made confessional statement before the Magistrate though he added that the same was made under duress. Towards the end of his cross-examination, he significantly stated that he and defendant No. 5 had taken the Gypsy to a place called Rengtekawn to wash the Gypsy at the water-hole on the night of 31.12.1999.

12. Mr. Lalhminglana Fanai, who was the officer-in-charge of the Excise Station, Kolasib, also give evidence as a witness. He stated that defendant Nos. 5 and 6 were not assigned duty on the night of 31.12.1999. In fact, it was he along with his staff who were on duty that night. He stated that the incident came to his knowledge only on 3-1-2000 because of public reaction after recovery of the dead body. He stated that he never detained duty party without a Commander and therefore defendant Nos. 5 and 6 were never detained by him on the night of 31.12.1999.

12.1. In his cross-examination, he stated that he did not know who had sent defendant Nos. 5 and 6 to buy chicken for the office. He also admitted that both the said defendants were arrested by the police in connection with the death of the deceased. Defendant Nos. 5 and 6 were Excise Constables who were posted at Kolasib Excise Station during December, 1999.

13. Mr. Ngurchungnunga, who was the Superintendent of Excise & Narcotics, Kolasib from December 1997 to June 2001 and who later on became Assistant Commissioner, Excise & Narcotics, also came forward and adduced evidence. He stated that he came to know about the incident late in the evening of 3.1.2000. No excise personnel were detained by him for night duty on Thingdawl-Aizawl Road and its surrounding areas on the night of 31.12.1999. In fact, Inspector Lalhminglana Fanai, Officer-in-Charge of Excise Station, Kolasib and his party were on duty. He did not issue any arrest warrant for arrest of the deceased. No Constable is empowered to arrest any person. Criminal case against defendant Nos. 5 and 6 was going on. Whatever was done by the said defendants was not done on duty and therefore the Department cannot be held responsible for

alleged misconduct of the said defendants.

13.1. In his cross-examination, he stated that though he had given money to one of his staff to buy chicken, he did not give money to defendant Nos. 5 and 6. But he stated that he was not 100% sure to whom he had given the money.

DECISION OF THE TRIAL COURT:

14. Based on the pleadings, the trial Court had framed the following 8 issues:--

"1) Whether there was any cause of action in favour of the plaintiff and against the defendants.

2) Whether the suit was barred by the principles of limitation, estoppel and acquiescence.

3) Whether the suit was maintainable in its present form and style.

4) Whether the suit was bad for misjoinder and non-joinder of necessary parties.

5) Whether the suit was properly valued for the purpose of court fees.

6) Whether the deceased Vanlalnghaka was apprehended/arrested by the excise personnel on duty on the night of 31.12.1999.

7) Whether Vanlalnghaka had died while he was in the custody of excise personnel due to torture/injuries inflicted upon him by two excise personnel i.e. defendant Nos. 5 and 6.

8) Whether the plaintiff was entitled to the reliefs claimed, if so, to what extent."

14.1. Issue Nos. 1, 2, 3, 4 and 5 were taken up together and after due consideration, those were decided in favour of the plaintiff. In so far issue Nos. 6 and 7 were concerned, the learned trial Court relied upon the evidence adduced by defendant Nos. 5 and 6 and held that from the evidence of the said two defendants, it was conclusively proved that the deceased was apprehended by defendant Nos. 5 and 6 and that the deceased had actually died due to injuries inflicted upon him by the said defendants. Defendant Nos. 5 and 6 had also admitted to have dumped the dead body of the deceased on the outskirts of Thingdawl. It was therefore held that the defendant Nos. 5 and 6 had apprehended the deceased and that they were responsible for the death of the deceased while he was under their custody. Regarding issue No. 8, the learned trial Court after opining that the defendants were jointly and severally liable to pay compensation for the custodial death of Vanlalnghaka to the plaintiff, relied on the structured formula under the Motor Vehicles Act, 1988 and held that the plaintiff was entitled to compensation of Rs. 13,70,000/- with simple interest @ 9% per annum from the date of filing the civil suit till realization of the decretal amount by taking the monthly income of the deceased as Rs. 10,000/- and the multiplier of 17. It was directed that defendant Nos. 1 to 4 should pay the said amount to the plaintiff whereafter they should recover the decretal amount from defendant Nos. 5 and 6.

SUBMISSIONS:

15. Learned counsel for the appellants submits that the learned trial Court had relied upon inadmissible evidence inasmuch as statement of the appellants made before the police were taken into consideration. Learned trial Court had also relied upon the confessional statements of the appellants though they had stated that such statements were not made voluntarily but under duress. There were discrepancies regarding date and time given in the confessional statement of appellant No. 2. Moreover, reflection time was not given before recording confessional statement. Therefore, such confessional statement could not have been relied upon. Plaintiff is a mentally ill person As such, the FIR lodged by her ought to have been considered with caution and circumspection. There was delay in lodging of FIR. Income certificate of the deceased was issued by Block Development Officer, Thingdawl who had no authority to issue such certificate and had no means to verify the income of the deceased. He was also not examined by the Court below. Compensation could not have been awarded on the basis of such a document. Moreover, the licence of the workshop of the deceased had expired which raised doubts about the income earned by the deceased. As the income of the deceased was not proved, the notional income as provided in Schedule-II of the Motor Vehicles Act, 1988 ought to have been made the basis of compensation. No court fee was paid by the plaintiff. There is no provision to provide exemption from payment of court fee. Since criminal case is yet to be concluded, learned trial Court erred in holding defendant Nos. 5 and 6 responsible for the death of the deceased. Alternatively, it is argued that the State being vicariously liable for the acts of its employees, in the event of dismissal of the appeal, the judgment and decree should be suitably modified by making the State liable to pay the compensation without recovering the same from the appellants.

16. Though the State has not filed any appeal, learned Government Advocate in his argument supported the stand of the appellants. It is contended that there was no evidence to show that the appellants were responsible for the death of the deceased in the course of their duty or employment. It is argued that the alleged offence may have been committed by defendant Nos. 5 and 6 but it was certainly not done in the course of their employment. From the evidence of the Investigating Officer (IO), it is clear that the victim was under the custody of the appellants and not under the custody of the State respondents. There is no evidence that the appellants were directed by the superior officers or by any Magistrate to arrest the victim. Appellants were not performing duties on the night of 31.12.1999. State is not responsible for the alleged misconduct of defendant Nos. 5 and 6. As such, question of State being vicariously liable and therefore liable to pay compensation may not arise.

17. Learned counsel for the respondent No. 5/plaintiff on the other hand submits that Vanlalnghaka had died due to fatal injuries sustained by him while he was under the custody of defendant Nos. 5 and 6, who had also admitted to torturing

him while he was in their custody on 31.12.1999. State has not filed any appeal or cross-objection against the impugned judgment and decree. Though defendant Nos. 5 and 6 stated that they had made their confessional statements before the Magistrate under duress, they did not retract such confessional statements. Under Section 50 of the Mizoram Liquor Total Prohibition Act, 1995, only an Excise Officer not below the rank of Assistant Sub-Inspector is competent to make arrest. Defendant Nos. 5 and 6 being Constables, were not competent to arrest the deceased. Thus, they had violated the fundamental right of the deceased under Article 21 of the Constitution of India. Postmortem report reveals that the deceased had suffered 40 injuries on his body which were ante-mortem in nature. Regarding the challenge to the quantum of compensation awarded, learned counsel for the respondent No. 5 submits that deceased was a carpenter and was a young man of 32 years at the time of his death. Compensation awarded by the Court below is just and reasonable and no interference is called for. State is responsible for the unlawful death of the deceased while in custody of defendant Nos. 5 and 6. Impugned judgment and order is perfectly justified and therefore the appeal filed by defendant Nos. 5 and 6 is liable to be dismissed.

DISCUSSIONS AND CONCLUSIONS:

18. Submissions made by the learned counsel for the parties have been considered. Also perused the materials on record including the LCR.

19. At the outset, two things need to be made clear. Firstly, this appeal is on the civil side questioning the legality and validity of the quantum of compensation awarded by the learned trial Court to the plaintiff for the untimely and unlawful death of her son. In this appeal, we are not concerned with the criminal culpability of defendant Nos. 5 and 6 in the death of the deceased. That is a separate issue and would be gone into in the criminal trial. At this stage, we may remind ourselves that the standard of proof in a civil proceeding is substantially different from a criminal trial where the charge against the accused would have to be proved beyond all reasonable doubt to warrant any conviction, which is not so in a civil suit where the standard of proof is less rigorous. Secondly, against the judgment and decree of the learned trial Court, the State has not filed any appeal or cross-objection. Natural corollary of this would be that the State has accepted the verdict of the learned trial Court and finds no good ground to challenge the same in appeal despite submissions made by the learned Government Advocate that since defendant Nos. 5 and 6 were not on duty at the time when the deceased died under their custody, liability should not be fastened on the State at the first instance. In the absence of any appeal or cross-objection by the State, such a stand is not available to the State. The judgment and decree under appeal has become final in so far the State is concerned.

20. Having said so, let us now turn to the evidence on record. At this stage, it may be pointed out that though defendant Nos. 5 and 6 had objected to certain exhibits such as FIR, charge-sheet and post-mortem report on the ground that originals were not produced, they had admitted in their evidence that they are

facing trial before the criminal Court in connection with the death of Vanlalnghaka. The criminal trial was started on the basis of the charge-sheet submitted by the police which in turn was finalized on the basis of the FIR lodged by the plaintiff. They had also admitted to have received copies of the charge-sheet and other documents in the criminal trial. Therefore, objection and contention of defendant Nos. 5 and 6 on placing reliance on the said documents does not hold good.

21. The Investigating Officer (10) in his evidence stated that he had conducted the investigation in connection with Kolasib PS Case No. 1/2000 relating to the death of Vanlalnghaka, son of the plaintiff. In the course of the investigation, he had arrested defendant Nos. 5 and 6 as it became apparent that they were the excise personnel who had apprehended the deceased on the late evening of 31.12.1999. During interrogation, both of them had confessed their guilt saying that they had arrested the deceased and had assaulted him with hammer and wheel wrench inside the Gypsy belonging to the Excise Department which was driven by the defendant No. 5. Thereafter, they dumped the dead body of Vanlalnghaka near the RTP farm. The above stood corroborated by the confessional statements of defendant Nos. 5 and 6 made before the Magistrate. As per opinion of forensic expert, death was caused because of the head injuries and other injuries on the body of the deceased. Report of Forensic Science Laboratory indicated that the blood sample collected from the seat rexin of the Gypsy tested positive for human blood and it matched with the blood sample of the deceased. He submitted that at the end of his investigation, he was prima facie satisfied that defendant Nos. 5 and 6 had killed Vanlalnghaka and thereafter he submitted charge-sheet against them in the Criminal Court under Section 302 IPC. As per the charge-sheet, the two accused (defendant Nos. 5 and 6) had assaulted the deceased inside the Gypsy belonging to the Excise Department using hammer and wheel wrench and thereafter dumped the body near the RTP farm.

22. Both defendant Nos. 5 and 6 admitted in their evidence that they had apprehended the deceased as he was in a state of intoxication. They admitted that they did not take him to the Excise Station but instead let him off after carrying him in their Gypsy for a while. They also admitted that they were facing a criminal trial as accused on account of death of the deceased. It was admitted that they had received a copy of the charge-sheet in the criminal trial. It was also admitted that they had taken the Gypsy to a place called Rengtekawn to wash it at the water hole on the night of 31.12.1999, which clearly revealed their anxiety to remove the blood which had spilled over inside the vehicle. Otherwise, there was no reason to wash the vehicle at such an odd hour.

23. Post-mortem report indicates that there were as many as 40 injury marks on the body of the deceased including a large number of wounds on the head. All the wounds were ante-mortem in nature and were caused by blunt force impact. As per medical opinion, cause of death was because of the cumulative effect of

head injuries and other injuries on the body of the deceased which were sufficient to cause death in the ordinary course of nature.

24. From a cumulative analysis of the evidence adduced and which are on record, following unmistakable features clearly emerge-

"1) The deceased was apprehended on the late evening of 31.12.1999 by defendant Nos. 5 and 6 who were Excise Constables and who took him in the Gypsy vehicle belonging to the Excise Department which was driven by defendant No. 5.

2) They were not detailed for duty but they had gone to buy chicken for their office.

3) Defendant Nos. 5 and 6 admitted to have let off the deceased near the highway without taking him to the Excise Station.

4) They had taken the Gypsy vehicle on that night itself for washing.

5) From 31.12.1999, the deceased was missing. His dead body was recovered in the evening of 3.1.2000.

6) Police had arrested defendant Nos. 5 and 6 in connection with the police case relating to the death of the deceased.

7) Post-mortem examination report shows 40 injury marks using blunt force over the head and body of the deceased which would be sufficient to cause death in the ordinary course of nature.

8) Blood stains were found on the seat rexin of the Gypsy in which defendant Nos. 5 and 6 had taken away the deceased.

9) As per FSL report, the said blood sample was that of human blood and matched the blood sample of the deceased.

10) Defendant Nos. 5 and 6 made confessional statements before the Magistrate under Section 164 Cr.P.C. admitting their involvement in assaulting the deceased by using hammer and wheel wrench.

11) Though they stated that such statements were made under duress, they have not retracted their confessional statements.

12) Investigating Officer (IO) at the conclusion of his investigation prima facie came to the conclusion that defendant Nos. 5 and 6 were responsible for the death of plaintiff's son and accordingly filed charge-sheet against them under Section 302 IPC. As per charge-sheet, they had assaulted the deceased by using hammer and wheel wrench and thereafter dumped the body near the RTP farm."

25. On the basis of such overwhelming clear indicators, no other view except the view that defendant Nos. 5 and 6 were responsible for the untimely and unlawful death of the son of the plaintiff is possible. Plaintiff's son had died while he was

under the custody of defendant Nos. 5 and 6. There can be no escape from this conclusion. In that view of the matter, this Court is in agreement with the view taken by the learned trial Court that defendant Nos. 5 and 6 (appellants herein) were responsible for the death of plaintiff's son.

26. This then brings us to the issue of compensation. The death of plaintiff's son is akin to custodial death. It is a clear case where right to life and human dignity of the deceased was severely violated by defendant Nos. 5 and 6. In such a case, the dependent of the victim is entitled to seek remedy both under the public law as well as under the private law. It is not necessary to delve into the distinction between public law and private law remedy here since the same has been well delineated in a number of cases by the Hon'ble Supreme Court including in the case of *Common Cause, A Registered Society Vs. Union of India and Others*, . Public law remedies have now been extended to the realm of tort. Compensation is awarded to victims who suffer personal injuries at the hands of the State or its officials. In cases relating to custodial death, compensation is awarded by the Courts under the public law domain. This would be evident from *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, and a host of other cases.

27. It is also seen that while determining the quantum of compensation under the public law remedy, Court can take assistance from the structured formula under the Schedule to the Motor Vehicles Act, 1988 or the Workmen's Compensation Act, 1923 to arrive at a just and fair compensation.

28. In *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, , the decision of the Calcutta High Court in awarding compensation of Rs. 10 lakhs to one Smt. Hanuffa Khatoon, a Bangladeshi national, on whom rape was committed in the Railway Yatri Niwas by railway employees was upheld. Holding that the right of the victim under Article 21 was violated, the Court fastened liability on the Railways by declaring that the Railways were vicariously liable in damages to the person wronged by its employees.

29. If the plaintiff had filed a petition under Article 226 of the Constitution of India invoking public law remedy, in the facts of the present case, the Court would have certainly come to the aid of the plaintiff and would have awarded a just and fair compensation. As already noticed above, to arrive at a just and fair compensation, the Court can take the assistance of the Schedule to the Motor Vehicles Act and the Workmen's Compensation Act. If that be so, there is no reason why similar relief should not be extended to the plaintiff when she has invoked the private law remedy by insisting on higher proof and other technicalities.

30. Coming specifically to the compensation awarded to the plaintiff in the present case, it is seen that the learned trial Court had accepted monthly income of the deceased as Rs. 10,000/- as against the claim of Rs. 15,000/-. Since the deceased was aged about 32 years at the time of death, the multiplier would be

17. Based on the structured formula under the Motor Vehicles Act, compensation of Rs. 13,60,000/- was arrived at to which a further sum of Rs. 10,000/- under the head of general damages was added, thus quantifying the total compensation at Rs. 13,70,000/-. The deceased had a furniture workshop for which he had a licence though not renewed subsequently. Since he had a furniture workshop, certainly he must have earned something. Question is, how much? Defendants had raised objection regarding the income certificate of the deceased on the ground of it being issued by an incompetent authority and there being no material basis for arriving at the figure of Rs. 15,000/- per month. In such circumstances, it would not be unrealistic to lower the monthly income of the deceased to half of what was claimed, i.e., Rs. 7500/- per month which in the facts and circumstances of the case, appears to be just and reasonable. It would not be unreasonable at all to take the view that a young man engaged in carpentry and having a furniture workshop, would earn on an average about Rs. 7500/- per month. Whether the workshop had a valid licence or not would be immaterial. In a proven case of custodial death where violation of Article 21 is established, in determining the consequential compensation to be paid, strict rules of evidence relatable to the quantum of compensation may have to be relaxed even though the relief claimed is under the private law remedy, unlike in other suits where pecuniary relief is sought. If the income of the deceased is taken to be Rs. 7500/- per month, the compensation would be around Rs. 10,20,000/- by applying the above formula. Keeping in tune with the compensation awarded in the case of *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, , the aforesaid compensation can be rounded off to Rs. 10 lakhs. Thus, plaintiff I would be entitled to receive compensation of Rs. 10 lakhs for the death of her son.

31. In so far simple interest @ 9% per annum is concerned, the same appears to be on the higher side. It is accordingly modified to 6% per annum from the date of filing of the suit till full and complete payment is made.

32. There is one more aspect. Respondents have raised objection regarding non-payment of court fee by the plaintiff for which they contend that the suit should be dismissed. Non-payment or payment of deficit court fee is a curable irregularity which is not fatal to the outcome of the suit. Since court fee was not paid by the plaintiff, the same should now be paid by the plaintiff from the decretal amount.

33. Thus, plaintiff/respondent No. 5 would be entitled to receive Rs. 10 lakhs with simple interest @6% per annum from the date of filing of the suit till full and complete realization of the compensation amount from the respondent Nos. 1 to 4, subject to payment of the court fee amount by the plaintiff.

34. Respondent Nos. 1 to 4 shall thereafter recover the decretal amount from the appellants (defendant Nos. 5 and 6).

35. Subject to the above modification, appeal is dismissed but there shall be no

order as to costs. Draw up the decree accordingly.