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**(2011) 03 OHC CK 0061**

**In the Orissa High Court**

**Case No : Writ Petition (C) No. 23407 of 2010**

Sabitri Kanhar and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision : 18-03-2011**

**Acts Referred:**

Constitution of India, 1950 — Article 21  
Motor Vehicles Act, 1988 — Section 163A  
Penal Code, 1860 (IPC) — Section 302, 303, 307, 325, 34

**Citation : (2011) 2 ILR (Ori) 123 : (2011) 2 OLR 1007**

**Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J**

**Bench : Division Bench**

**Final Decision : Allowed**

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## **Judgement**

V. Gopala Gowda, C.J.—The petitioner nos.1 and 2, the widows of late Sudarshan Kanhar and Late Duryodhan Kanhar respectively, are before this Court claiming compensation from the opp. parties by urging following facts and legal contentions.

2. The husband of petitioner no.1 Sudarsan Kanhar, her elder son (the husband of petitioner-2) Duryodhan Kanhar, her younger son Bhimasen Kanhar and a relative, Bhagaban Pradhan were convicted u/s 302/34, I.P.C. and sentenced to undergo imprisonment for life by the learned Addl. Sessions Judge, Boudh in S.T. No.25 of 2000 vide the judgment and order dated 15.02.2001 in connection with murder of one Kishore Chandra Behera on 05.09.1999 arising out of a land dispute.

3. It is the case of the petitioners that while undergoing the aforesaid sentence in Special Sub-Jail, Boudh Sudarsan Kanhar (Convict No.3734/A) and Duryodhan Kanhar (Convict No.3333/A) were stoned to death on the night of 21/22.09.2010 by another convict namely Antaryami Rana (Convict No.3513/A). It is alleged that on the said night at about 1.00 A.M. Antaryami Rana attacked Sudarsan Kanhar, Duryodhan Kanhar and Kamapala Khamari with a stone inside Ward No.4

who were severely and grievously injured. All the three critically injured convicts were immediately shifted to District Head Quarter Hospital, Boudh by the jail staff. Convict Duryodhan Kanhar was declared dead at District Head Quarter Hospital and convict Sudarsan Kanhar was also declared dead at 3.00 A.M. while he was undergoing treatment and the other convict Kamapla Khamari was referred to VSS Medical College, Hospital, Burla on 22.09.2010.

4. On 22.09.2010, the Superintendent of Special Sub-Jail, Boudh lodged an F.I.R. with Boudh Police Station and a case was registered u/s 303/307/325, I.P.C. vide Boudh P.S. Case No.109 of 2010 corresponding to G.R. Case No.259 of 2010.

5. It is stated that the deceased Sudarsan Kanhar is survived by his wife (petitioner no.1) and his younger son Bhimasen Kanhar who is suffering sentence at Biju Patnaik Open Air Ashram, Jamujhari. The deceased Duryodhan Kanhar is survived by his wife (petitioner no.2) and his two minor sons, namely, Trilochan and Chandan Kanhar.

6. It is the further case of the petitioners that in view of the brutal murder of Sudarsan Kanhar and Duryodhan Kanhar in the jail custody, the family of the petitioners suffered from severe trauma and intense mental agony. In the death of the two adult senior members, the family of the petitioners obviously suffered an irreparable loss. The safety, survival and future of the petitioners' family have been jeopardized on account of murder of two adult senior members of the family who were expected to be released in the near future which would have enabled them to take care of the family. It is stated that when they were alive and suffering sentence inside the jail, they had been supporting the family by sending the wages earned therein by them. In view of the brutal death in the jail custody, the payment of suitable compensation by the State has become an imperative need for ensuring the livelihood/maintenance of the family and for securing the upbringing/education of the minor children.

7. It is very relevant to be stated that on 22.09.2010 the Deputy Inspector General of Prisons, Berhampur range conducted an enquiry and submitted his report vide letter No.62 dated 24.09.2010. The relevant portion of the said report reads as under:

During my course of enquiry, I gathered information that the officers are not attending lock-up and un-lock-up of the wards for which the Guarding Staff are getting scope to neglect in their duty, not searching the wards before lock-up as a result this unfortunate incident took place inside the Special Sub-Jail, Boudh on 21.09.2010 night. The Jailer-cum-Superintendent Sri Arun Ku. Rath is squarely responsible for such security mismanagement of the jail.

8. It is further stated that the persons were brutally murdered while suffering sentence due to the utter failure on the part of the State and its employees in ensuring the safety and security of the deceased prisoners inside the jail. The aforesaid failure arising out of the negligence and lapses of the jail authorities and staff in this regard resulted in violation of the right to life of the deceased

convicts under Article 21 of the Constitution, therefore, the State is vicariously liable to pay compensation to the next of kin of the deceased person as the same is mandated by the law declared by the Hon'ble Supreme Court in a catena of decisions. Therefore, the petitioners having found no other alternative remedy they have filed this writ petition seeking for issuance of writ of mandamus directing the opp. party no.1 to pay a compensation of Rs.25.00 lakh to the petitioners for the murder of their husbands by another inmate in the Special Sub-Jail, Boudh, Ward No.4 while they were undergoing sentence.

9. Statement of counter has been filed on behalf of opp. parties 1 and 2 traversing the petitioners' averments, but the facts that the incident took place inside the jail custody and a criminal case has been registered against another convict who committed offence under Sections 303/307/325, I.P.C. on the complaint of Sri Arun Kumar Rath, Superintendent, Special Sub-Jail, Boudh are not in dispute. It is stated that a spot inquiry was conducted by the D.I.G. of Prisons, Berhampur Range, Berhampur on 22.09.2010. Basing upon the inquiry report dated 24.09.2010 of the D.I.G., Prisons, Berhampur the Jailor-cum-Superintendent, two Head Warders and one Warder have been placed under suspension and departmental action has already been initiated against them. It is also stated therein that after finalization of the Departmental Proceedings, the culpable negligence on the part of the Jail Officers/Staff will be determined.

10. It is further stated that the Orissa Human Rights Commission is also aware of the alleged ghastly incident and has registered OHRC Case No. 1749/2010.

11. In view of the aforesaid stand taken by the opp. parties, the facts that the alleged ghastly incident which had taken place inside the jail custody and two convicts who are the husbands of the petitioners died on account of the assault by another convict who was undergoing sentence along with the deceased for life are not in dispute. Therefore, the only question that falls for our consideration is as to what compensation the petitioners are entitled to in this petition.

12. The death of the two prisoners occurred on account of the attack by the co-convict No.3513/A Antaryani Rana is not in dispute. Further, it is not in dispute that against the said co-convict vide Boudh P.S. Case No. 109 of 2010 has been registered for the offences punishable u/s 303/307/325, I.P.C. corresponding to G.R. Case No.259 of 2010. Further, the report of inquiry dated 24.09.2010 submitted by the D.I.G. of Prisons, Berhanpur Range, Berhanpur, states as follows:

I am to state that on receipt of the information from the Jailor-cum-Superintendent of Special Sub-Jail, Boudh on 21.09.2010 night at about 2.00 A.M. regarding death of two Life Convicts and one serious injury of another convict due to causing grievous hurt by a life convict inside the ward No.4, I proceeded to Boudh on 22.09.2010 morning to enquire into the matter. There, I came to know that life convict No.3513/A, Antaryami Rana, S/o. Ratha Rana of Village - Kirasira, P.S. Manmunda of District - Boudh attacked with a stone of size

1" length and 6 to 8" width weighing about two K.G. to 2.1/2 K.G. having sharpness around the surface to the life convict No.3333/A, Duryodhan Kanhar @ Milu aged about 40 years, S/o. Sudarsan Kanhar, Convict No.3734/A, Sudarsan Kanhar aged about 80 years S/o. Surya Kanhar of Village-Goradamunda, P.S. Harvanga of District-Boudh, and to life convict 3743/A, Kamapla Khamari aged about 60 years S/o. Iswar Khamari of Village -Godhaeswar, P.S. Birmaharajpur of District - Sonpur on 21.09.2010 night at about 1.00 A.M.

13. Further, as could be seen from the statement of counter filed on behalf of opp. parties 1 and 2, basing upon the inquiry report the Jailor-cum-Superintendent, two Head Warders and one Warder have already been placed under suspension and departmental action has already been initiated against them and after finalization of the Departmental Proceedings, the culpable negligence on the part of the Jail Officers/Staff will be determined.

14. Keeping the aforesaid facts in view, we are of the considered opinion that the petitioners are entitled to compensation for the negligence on the part of the Jail Superintendent and the Staff referred to supra for having killed the husband of the petitioners by co-convicts. Therefore, the compensation is required to be awarded in favour of the petitioners. Then what is the quantum of compensation to be awarded is the question required to be considered. For the above purpose, the guidelines of the M.V. Act are required to be applied to the case on hand. u/s 163-A of the M.V. Act and the Schedule therein the minimum monthly income of the deceased Sudarshan Kanhar in the absence of the income proved by the claimants the petitioners herein shall be taken at Rs.3,000/-. Apart from the above, guidelines, the life convicts will be continuing during the period of imprisonment, as the jail authorities are required to get the work done by the convicts depends their skill. The age of the deceased husband of petitioner no.1 is about 70 years. In such case, the multiplier of 5 is applicable. If out of the monthly income of Rs.3000/-, 1/3rd is deducted towards personal expenses, the monthly contribution towards family would come to Rs.2000/-. Calculated on the aforesaid basis the total dependency would come to Rs. 1,20,000/-. If to the above sum an amount of Rs.5,000/- towards funeral expenses and obsequies ceremony is added the total amount of compensation would come to Rs.1,25,000/- (rupees one lakh twenty five thousand). In so far as the husband of the petitioner no.2 Duryodhan Kanhar is concerned, he was aged about 45 years at the time of death. His monthly income has also not been proved. Therefore, in the absence of any proof of his income, his monthly income is taken as Rs.3000/-. Having regard to his age, multiplier of 13 is applicable. On the aforesaid basis if 1/3rd out of the aforesaid amount is taken as personal expenses, then the dependency of the second petitioner would come to Rs.2000/- per month, i.e. Rs.24,000/-per year and applying the multiplier of 13, it would come to Rs.3,12,000/-. If to the above sum an amount of Rs.58,000/- towards funeral expenses and obsequies ceremony, loss of consortium, loss of love and affection and loss of estate is added, which are considered as conventional heads, the total amount of compensation would come to

Rs.3,70,000/- (rupees three lakh seventy thousand). Hence, we award a sum of Rs.1,25,000/- (rupees one lakh twenty-five thousand) towards the death of the deceased Sudarsan Kanhar in favour of his wife (petitioner no.1) and minor son and Rs.3,70,000/- (rupees three lakh seventy thousand) towards the death of Duryodhan Kanhar in favour of his wife (petitioner no.2) and two minor sons. The aforesaid amounts shall carry interest at the rate of 6% per annum from the date of filing of the writ petition till the amounts are paid. Accordingly, the opp. parties are directed to pay the aforesaid amount to the claimant-petitioners within a period of four weeks from the date of date of this judgment.

The writ petition is allowed accordingly.