
(1988) 06 GAU CK 0038
In the Gauhati High Court

Sita Rani Gupta

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-06-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 38, 39
Employees Compensation Act, 1923 — Section 4

Citation : (1989) 1 ACC 21 : (1989) ACJ 348

Hon'ble Judges : S.P. Rajkhowa, J;B.L. Hansaria, J

Bench : Division Bench

Judgement

B.L. Hansaria, J.—The demand for justice in the present case is by a victim of crisis. A poor widow within her early 20s has knocked the door of this Court through a public spirited lawyer to seek compensation, as far as money can, for the death of her driver-husband on 6-12-83 in a motor accident at Janimatihdonge Gaon under Sibsagar Police Station. The ignorance of the widow stood in her way to file a case either before the Motor Accident Claims Tribunal or Commissioner appointed under the provisions of the Workmen's Compensation Act. Having come in contact with the aforesaid lawyer, she has approached this Court under Article 226 of the Constitution to seek just compensation for the death of her husband. The widow has two daughters also aged about 7 and 4 years by now to look after and to bring them up. Her poverty is, however, standing in the way. Shri Birmiwal has implored us to cast away the shackles of rigidity and to adopt a human and humane approach and to assist the poor widow. He contends that judicial activism must imbibe us and we should forge new remedy and fashion new strategy to meet the challenge thrown by the present case.

2. If one were to approach the finer aspects of human rights unfolded by this case in the traditional mould it would have been enough to say that the present proceeding is not appropriate to do anything in the matter as the petitioner should have either approached the Motor Accident Claims Tribunal or the Commissioner appointed under the Workmen's Compensation Act which is the

contention advanced by Shri Chaliha. The delay in approach to this Court could have also been used against the petitioner to turn down her, prayer for just compensation. Having known about the tragedy which has be fallen the widow we do not think if we would be discharging our constitutional role properly if we were to send back the petitioner empty-handed which would have compelled the petitioner to live a life of destitute or to lead a life of immorality if for no other reason than to bring up the two innocent daughters, we have said so because we find on record a letter of the petitioner addressed to the Chief Justice in which it has been stated that she may not be compelled to go astray to protect her blood. We have, therefore, to protect the dignity of the petitioner which is one of the founding pillars of our Constitution. The Preamble of our Constitution requires protection of the dignity of an individual and also promotion of social justice. New situations throw new challenges and a court alive to the reality of the situation has to adopt a creative and innovative attitude which is in consonance with human rights.

3. If we were to go by tradition, we could have at last left it open to the petitioner to approach the Commissioner appointed under the Workmen's Compensation Act with a direction to admit the application without going into the question of limitation. We are not doing so because this would have prolonged the agony of the petitioner who is in dire distress and wants some monetary help immediately. As we have decided to award compensation as payable under the provisions of the aforesaid Act, our taking up of the matter has really made no difference so far as the State is concerned.

4. Let us first see whether the State is at all liable to compensate the petitioner for the loss of her husband. To answer this question, let the broad facts be noted. Deceased Ramesh Prasad was a driver by profession. At the relevant time he was driving motor vehicle No. MLS 5846. He was then aged about 28 years. This vehicle was requisitioned on 6-12-83 by the Deputy Commissioner, Kamrup and was detailed to escort a NSA detenu, the present Home Minister, Government of Assam. In the vehicle, there were four police personnel also. It met with an accident on 6-12-83. In the accident four police personnel and the petitioner's husband met their death at the spot. These broad facts are not denied. The question is whether the State of Assam is under any legal obligation to compensate the petitioner for the death of her husband. The contention of Shri Birmiwai is that as the vehicle had been requisitioned on 5 12-83, the petitioner's husband became an employee of the State and as such he was entitled to such compensation as has been paid to the police personnel who had also met their end in the accident. To fortify this submission, we have been referred to Notification No. TMV 294/484/289 dated 18-11-85 which has laid down the amount of compensation per day to be paid in connection with requisition of motor vehicles under the provisions of the Assam Requisition and Control of Vehicles Act, 1968. This Notification, apart from mentioning the compensation to be paid to the owner of the vehicle, has also stated that each driver shall be paid "daily wage" of Rs. 20/- per day. In the affidavit-in-opposition

filed on behalf of respondents No. 1, 2 and 3 it has been stated in para 7 that the requisitioning authority while requisitioning the private vehicles is required to bear the expenses of the vehicle; and the employees who come along with the vehicle are paid "daily wages" during the period. This would show that for the period during which a vehicle is under requisition the driver becomes an employee of the State. As such the driver or his heir is entitled to as much of compensation as is paid to other Government employees. We are, therefore, satisfied that the State is, in a case of the present nature, under a legal obligation to pay compensation to the dependants of a driver if he were to meet his end in an accident while driving the vehicle for the purpose for which it was requisitioned and the Workmen's Compensation Act comes into force as the accident would be arising out of and in course of the employment.

5. Apart from the direct liability arising under the aforesaid Act, we would think that in the present case some payment to the petitioner is called for to protect social justice and to compensate her for violation of equality clause. We have mentioned about equality because compensation for the death of police personnel who had met their end in the same accident has apparently been paid, while denying the same to the dependants of the driver. Upholding of the Directive Principles enshrined in Articles 39 (e) ("...the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength"); 39(f) ("...children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment"); 41 ("...State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want"); and 46 (requiring promotion of educational and economic interests of the weaker sections of the people and their protection from social injustice and all forms of exploitation), which are some of the guiding stars of our national ethos, also require granting of such amount of compensation as would enable the petitioner to take care of her maintenance and that of two minor children dependant on her.

6. In so far as the requirement of upholding social justice is concerned, there is no necessity to dilate on the same as by now it is well recognised that administration of justice can no longer be merely protector of legal rights but must whenever possible be dispensar of social justice. See para 30 of *Sadhuram Bansal Vs. Pulin Behari Sarkar and Others*, We may point out here that though the need to maintain a social order in which social justice also prevails [vide Article 38(1)], is only a requirement of the Directive Principle mentioned in Part-IV of our Constitution, which is also proclaimed by the Preamble to the Constitution, and though the Directive Principles are not enforceable in a Court, there should be no dispute that we have to keep in our fore-front the socialistic goals set out in the Preamble and the Directive Principles as stated in para 5 of

Atam Prakash Vs. State of Haryana and Others, In so far as awarding of compensation in exercise of power Under Article 226 of the Constitution as a measure of remedial relief is concerned, we may refer to Rudul Sah Vs. State of Bihar and Another, Sebastian M. Hongray Vs. Union of India (UOI), ; Bhim Singh 1984 (4) SCC 677 and the Peoples' Union for Democratic Rights Vs. State of Bihar and Others, where for violation of fundamental rights compensations were granted.

7. From what has been stated above, we are satisfied that a case of award of just compensation has been made out by the petitioner and the facts and circumstances of the case do warrant that such compensation should be ordered to be paid by this Court in the present proceeding itself. This takes us to the question about the amount of compensation. We have noted that in the letter written by the petitioner to the Hon'ble Chief Justice of this Court it has been mentioned that her husband was drawing a monthly salary of Rs. 450/- per month. (We shall accept this amount as our norm to fix compensation instead of what has been stated in the aforesaid notification which has fixed daily wage @ Rs 20/- according to which monthly wage would be Rs. 600/-). At the time of his death Ramesh Prasad was aged 28 years. u/s 4(1) of the Workmen's Compensation Act, the compensation where death results from the injury is "an amount equal to 40% of the monthly wage of the deceased workman multiplied by the relevant factor" or an amount of Rs. 20,000/- whichever is more. Now, if we take 40% of Rs. 450/- it comes to Rs. 180 00. As Ramesh was aged 28 years, the relevant factor applicable is 211.79. If the sum of Rs. 180/- is multiplied by this factor we get a figure of a little more than Rs. 38,000/- which we round upto Rs. 40,000/-. As the petitioner has already been paid a sum of Rs. 10,000/- by way of ex-gratia payments in two instalments, the first of which was paid before the petitioner had approached this Court and the second in pursuance to the Court's order passed by this Court on 19-12-86, the petitioner is entitled to get a further sum of Rs. 30,000/- from the State and we order respondent No. 1 to pay this amount to the petitioner within a period of 6 weeks from today. This apart, we think it would be a good gesture on the part of the State to absorb the widow in any suitable Class-IV post under it. We have stated about Class-IV post because the widow is educated only upto Class-VII. This would enable the widow to bring up her two children in a desired way which would implement the Directive Principles of State Policy referred above.

8. In the result, the petition is allowed as aforesaid.