
(1997) 01 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1209 of 1992

Smt. Lata Pradhan and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Home Guards Rules, 1962 — Rule 20

Citation : (1997) 2 OLR 88

Hon'ble Judges : Susanta Chatterji, J; Ratnakar Dash, J

Bench : Division Bench

Advocate : K.S. Nandy and K.N. Sinha, for the Appellant; B.L.N. Swamy, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—This case is an illustration of a tragic story how an entire family consisting of 25 years widow with five small children faced due to a certain accidental demise of one Kabi Pradhan, who died in a train accident on 3.12.1990 at about 11.30 P.M. at Baulpur in the district of Dhenkanal while on duty. Said Kabi Pradhan was on patrolling duty as Home Guard under opposite party No.3, Commandant, Home Guard, Dhenkanal.

2. It is alleged that said Kabi Pradhan along with one Gunanidhi Sahu were engaged on shift duty from 10 P.M. to 6 A.M. to perform the patrolling duty on the C.P.P. NALCO Railway Line and while they were performing their duties on Railway Line at about 11.30 P.M. the coal transporting train (empty wagon) came from C.P.P. NALCO to Bharatpur and dashed them. Due to the aforesaid accident, Kabi Pradhan sustained severe injury and succumbed to death. There was an ex-gratia payment of only Rs. 30,000/- from the Chief Minister's Relief Fund to the family of the deceased.

3. The petitioners, namely, the widow and the children have come to this Court seeking the relief by way of compensation due to the death by invoking Rule 20

of the Orissa Home Guards Rules, 1962. The aforesaid Rule runs as follows :

"If a member of the Home Guards suffers any damage to his person or property while under training or on duty, he shall be paid such compensation as may be determined by the State Government provided that such damage is caused by his own negligence or wilful act or omission in contravention of any of the provisions of the Act or Rules made thereunder or orders or directions issued by his superior officer."

4. A calculation has been made and the appropriate writ has been sought for to command the opposite parties to effect the compensation to the petitioner. A notice was previously issued to the opposite parties claiming compensation of Rs. 4,05,000/- and thereafter there was a claim Rs. 3,16,600/-.

5. An affidavit has been filed on behalf of opposite party No. 3, sworn to by one Sri M. Sudarsan Rao, Reserve Inspector of Police, Home Guard, Dhenkanal. The allegations of the petitioners have been controverted, although there is an admission that the accident had taken place and due to the accident Kabi Pradhan had died. An attempt has been made as if the deceased met the accident due to his negligence as the engine did not hit him but he dashed against the wagon.

6. A rejoinder affidavit has been filed by reiterating the facts stated in the writ petition and controverting the allegations made in the counter affidavit.

7. We have heard the learned counsel for the petitioners and the learned Government Advocate, Mr. Swamy, at length. We have perused the materials on record. We are fully convinced that the accident had taken place and Kabi Pradhan died due to the said accident and there was no negligence on his part for meeting the accident. We find that Kabi Pradhan was naturally on duty and Rule 20 is attracted and such compensation has to be paid due to the damage sustained by the members of the family of the deceased. We have taken note of the salary the deceased was drawing. We have also taken note of his age and dependence. Our attention has also been drawn that Rs. 30,000/- had been received by the family of the deceased as ex gratia from the Chief Minister's Relief Fund.

8. Regard being had to the materials on record and taking into account the age, financial potentiality, loss sustained by the family and all other relevant factors including shock and sufferings sustained by them, we are of the view that it would meet the ends of justice if the State Government release further amount of Rs. 1,50,000/- as damages besides the ex gratia payment made earlier. Thus, we allow the writ petition, issue an appropriate writ accordingly commanding the opposite parties to take effective steps to release the sum of Rs. 1,50,000/- towards the damage and the compensation to be paid to the members of the family of the deceased within three months from the date of communication of the order. We also direct that out of the total amount of Rs. 1,50,000/-, sum of Rs. 1,30,000/- be kept in the fixed deposit in the joint name of the widow

mother and all minor children, so that out of the monthly interest accrued therefrom, the family may sustain the sufferings and Rs. 20,000/ shall be received by the family members in cash to meet any outstanding loan or expenses in this behalf. There, would be no order as to costs.

S.K. Dash, J.

9. I agree.