
(2001) 07 KAR CK 0068
In the Karnataka High Court
Case No : Writ Petition No. 1022 of 1995

Susheela (Deceased) by L.Rs and another	APPELLANT
Vs	
State of Karnataka and others	RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) ACJ 512 : (2001) ILR (Kar) 4035 : (2001) 4 KCCR 2465

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri. T.R. Subbanna, Amicus Curiae and Sri. H.R. Vishwanath, for the Appellant; Sri. A.N. Jayaram, General, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. The first petitioner-Smt. Susheela was the wife and the second petitioner is the mother, of one M.S. Patil. During the pendency of this petition, since the first petitioner has expired, her two minor sons-Master Shankar and Master Shambu were brought on record and they are represented by their guardian and grandmother, the second petitioner.

2. In this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a direction in the nature of a writ of mandamus or any other appropriate writ, directing the respondents to grant and release a sum of Rs. 5 lakhs in favour of the petitioners on account of the brutal murder of the said Patil on 15th September, 1993 by a gang of wood smugglers, when he tried to catch hold of them while he was guarding the Government forest as a Forest Guard.

2-A. It is the case of the petitioners that late Patil was married to the first petitioner on 1st May, 1987, and as a result of the wedlock, two sons, the aforesaid Shankar and Shambu, were born and the family was leading a very

happy life with the limited wages earned by the said Patil. It is the further case of the petitioners that the said Patil was the Forest Guard in the Department of Forest, Government of Karnataka, and was working on daily wage basis with effect from 15th July, 1986. It is asserted in the petition that the said Patil was discharging his duties honestly and in the best interest of the State and "was keenly observing the gang of wood cutters with a view to protect the forest growth and improve the forest wealth and maintain ecological balance". It is further asserted that he used to go deep into thick forest to prevent stealing of valuable forest produce by the wood smugglers; and while he was discharging his duties in the best interest of the State as a Forest Guard, a gang of wood smugglers in the middle of thick forest of Melmuri Village in Haveri Taluk, brutally murdered him on 15th September, 1993. It is the further case of the petitioners that on account of the murder of the said Patil, his wife, her two minor children and the mother of the said Patil had to face irreparable injury, hardship and misery on account of financial difficulties; and to bear the financial loss and difficulties, the first petitioner sent a representation to the Deputy Commissioner, Dharwad, on 29th October, 1993 seeking compensation for loss of dependency as the said Patil died in the course of his employment; and in response to the said representation, the Deputy Commissioner sent an endorsement dated 29th November, 1993, a copy of which has been produced as Annexure-B to the petition, informing the first petitioner that her representation was forwarded to the Deputy Conservator of Forests, Gadag Sub-Division, for appropriate action and the Deputy Conservator of Forests was pursuing the matter with higher authorities for appropriate action and, therefore, the first petitioner may contact the officers of the Forest Department at Gadag Sub-Division for further enquiry in the matter. Thereafter, the first petitioner also had received a communication dated 15th January, 1994 written by the second respondent through the Deputy Conservator of Forest, Gadag Sub-Division, wherein it was stated that in terms of the Government Order dated 6-8-1990, there is no provision to pay any compensation/monetary benefit to daily wage watchman who was murdered, A copy of the said communication has been produced as Annexure-C to the petition.

3. The respondents have filed statement of objections and resisted the claim made by the petitioners on the ground that there is no provision under the rules to pay compensation to the petitioners. However, it is admitted by the respondents that deceased Patil was working as a Forest Watcher on daily wage basis with effect from 15th July, 1986 and he was murdered while he was on duty. It is further stated in the statement of objections that since the said Patil had served the Department on daily wage basis only for about 7 years and 2 months and he was not employed on or before 1st July, 1984, his services could not be regularised in terms of the Government Order dated 6-8-1990 bearing No. DPAR 2 SLC 90. It is also stated that the name of the said Patil was included in the list of martyrs maintained by the Department of Forest. It is useful to refer to the statements made in paragraph 3 of the statement of objections, which read as under:

"The services of the said M.S. Patil could not be regularised in the light of the Government Order No. DPAR-2 SLC 90, dated 6-8-1990 as he was not employed on or before 1-7-1984. That being the factual situation, there was no provision under the rules to give any compensation or afford an opportunity to appoint the petitioner on compassionate grounds under the services of the respondents. Hence, the respondents are helpless in the matter to give any relief to the petitioner or her family in the absence of any provision thereto under the rules and the Government Orders on the subject. However, the name of the deceased M.S. Patil was included in the list of martyrs, maintained by the Department of Forest; of course this would be of no help to the petitioner monetarily or materially. The said fact was duly communicated to the petitioner by the respondent 2 through the respondent 3 as per Annexure-C to the writ petition".

4. The respondents, while they do not dispute that deceased Patil was murdered on 15th September, 1993 when he was on duty and protecting the forest produce of the State and his name was included in the list of Martyrs maintained by the Department of Forest, have declined to pay compensation to the heirs of late Patil only on the ground that there is no rule permitting grant of compensation in a case where a daily wage employee was killed in the course of employment.

5. I have heard Sri T.R. Subbanna, learned Senior Counsel, who assisted the Court as Amicus Curiae, and Sri H.R. Vishwanath, learned Counsel for the petitioners, and Sri A.N. Jayaram, learned Advocate General for the respondents.

6. Sri T.R. Subbanna, learned Senior Counsel, submitted that since it is not in dispute that deceased Patil was murdered while he was on duty under the State and the only defence taken in the statement of objections is that the rules framed by the State do not provide for payment of compensation to the legal heirs of deceased Patil, this Court, in exercise of its jurisdiction under Article 226 of the Constitution, should direct the respondents to pay reasonable compensation to the petitioners. He submitted that in a matter like this, when a person employed by the State is killed by wood smugglers while he was discharging his duties, his legal heirs cannot be deprived of their right to claim compensation on the ground that this Court, in exercise of its power under Article 226, cannot assess the quantum of compensation, and on that basis, direct the legal heirs who are in serious distress, to institute proceedings before the Civil Court. The learned Counsel pointed out that the factum of the death of late Patil by way of murder by smugglers of wood is not in dispute and the averments made in the petition that the petitioners are the legal heirs of late Patil and they were depending upon him for their livelihood, is also not in dispute; and since the only defence taken being that the rules framed by the State do not permit the State to pay compensation to the legal heirs of late Patil or to appoint his legal heirs on compassionate ground, this is a fit case where this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution to render justice to the parties and award reasonable compensation. It is their submission that while awarding compensation, the principle governing

the award of compensation in motor accidents cases can be kept in mind by this Court and in addition, some amount towards gallantry or velour shown by late Patil for protecting the forest produce of the State may be awarded.

7. However, the learned Advocate General while reiterating the stand taken in the statement of objections, submitted that it is not appropriate for this Court to exercise its power under Article 226 of the Constitution and award compensation to the petitioners. He further pointed out that the quantum of compensation claimed is highly excessive. It is his further submission that the pleadings in the petition even do not indicate the actual salary drawn by deceased Patil at the time of his death. He also pointed out that there is also no material on record to show that deceased Patil was the sole bread earner of the family and the petitioners were entirely depending upon him for their livelihood. However, he submitted that in the event of this Court taking a view that the petitioners are entitled for compensation, the income of deceased Patil at the time of his death, cannot be assessed at more than Rs. 800/- to 1,000/-per month keeping in view the prospects of enhancement of daily wages and increase of salary. In this connection, he referred to me the letter dated 3-4-1999 written to the Government Advocate by the Principal Chief Conservator of Forests wherein he has stated that deceased Patil was being paid wages at Rs. 24-65 at the time of his death.

8. In the light of the submissions made by the learned Counsel appearing for the parties, the questions that would arise for my consideration are-

(1) Whether the petitioners are entitled for relief by this Court in exercise of its power under Article 226 of the Constitution of India?

(2) Whether the principles that are required to be applied for assessing the compensation in cases of motor accidents, can be applied in a case like this; and in addition to the compensation to be so awarded, whether the legal heirs are entitled for some compensation towards gallantry/velour shown or on account of the murder of deceased M.S. Patil by wood smugglers while he was on duty?

Re: Question (1):

9. In my view, since most of the facts are not in dispute and do not involve serious questions of fact, the relief sought for by the petitioners cannot be denied to them on the ground that this Court should not exercise its power under Article 226 of the Constitution of India as the petitioners have a remedy open to them to enforce their legal rights by instituting appropriate proceedings before the Civil Court. It is true that the petitioners have a remedy before the Civil Court. However, in my view, that cannot be the sole ground to deny the relief to the petitioners in this petition. The facts of this case and the circumstances under which the petitioners have approached this Court would compel this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. No doubt, it is well-settled that in cases where serious disputed questions of facts which require investigation and recording of evidence, are involved, this

Court would not exercise its power under Article 226 of the Constitution; and direct the parties to enforce their rights before the Civil Court. As noticed by me earlier, it is not in dispute that Patil was murdered by wood smugglers on 15th September, 1993. It is also not in dispute that he was so murdered while he was discharging his duties. As rightly contended by the learned Counsel for the petitioners, none of the facts averred in the petition has been denied in the statement of objections. The only ground on which the prayer of the petitioners for payment of compensation and for that matter, even the request of the deceased first petitioner for appointment on compassionate ground, was denied was that the rules framed by the State do not permit for payment of compensation or to give appointment on compassionate ground to the wife of Patil, as he was only a daily wage employee and he was not entitled for regularisation in the service as he came to be appointed subsequent to 1-7-1984 and at the time of his death, he had only put in 7 years 2 months of service. It is necessary to point out that in paragraph 3 of the statement of objections, extracted above, it is admitted that the name of deceased Patil was included in the list of martyrs maintained in the Department of Forest. It is further stated that in the absence of any rules providing for payment of compensation, in the fact situation, the respondents "are helpless in the matter to give any relief to the petitioners". At paragraph 4 of the statement of objections, the respondents state that "they have got all the sympathy for all that what had come on the petitioner and her family due to the untimely demise of the said M.S. Patil". When this is the stand of the State in the statement of objections, in my view, this Court will not be justified in refusing to grant relief to the petitioners on the ground that the petitioners have a remedy before the Civil Court. The respondents have the information with regard to the wages that was being paid to deceased Patil at the time of his death. There is also no serious dispute with regard to the age of deceased Patil. Under the circumstances, there should not be any difficulty for this Court to assess the quantum of compensation if this Court takes the view that the petitioners are entitled for payment of compensation in a matter like this. The facts of this case indicate that the original first petitioner was the wife and the second petitioner is the aged mother, of deceased Patil. During the pendency of this petition, the first petitioner expired and her minor sons were brought on record. The fact that deceased Patil was working as a daily wage employee and drawing a meagre salary even according to the respondents, around Rs. 25/- per day, indicates the background, the social status and the helpless situation in which the family is placed on account of the untimely death of Patil. The Division Bench of this Court, in the case of Miss Pushpaleela Vs. State of Karnataka and Others, , has assessed the damages and awarded compensation to the victims of an Eye Camp, who have lost their eye sight on account of the negligence of the Doctors while conducting Eye Camp. The Division Bench of this Court also proceeded to hold on the basis of the report of the enquiry held, that there was negligence in conducting eye operations. Therefore, I am of the view that this Court, in appropriate cases, depending upon the fact situation and to do justice to the parties, can and should exercise its

power under Article 226 of the Constitution. The restriction imposed on the power of this Court under Article 226 of the Constitution is a self-imposed restriction. Therefore, if this Court, in a given case, is satisfied that the extraordinary facts of the case and the injustice done to the parties, require to be remedied urgently, this Court cannot refuse to exercise its power under Article 226 of the Constitution on the ground that the parties have a remedy before the Civil Court. The power of this Court under Article 226 of the Constitution of India is meant to be exercised to set right the injustice done to the parties and to give relief; and is not meant to be a dead letter in the Constitution. The facts of this case set out above, in my view, amply justifies the exercise of power of this Court under Article 226 of the Constitution, to grant relief prayed for by the petitioners.

Re: Question (2):

10. Now, the next question is, what is the principle that should be applied while awarding compensation? In motor accidents, persons lose their life or limb or suffer some other injuries on account of rash and negligent driving by a third party. In the instant case, the life of late Patil is also taken away by wood smugglers while he was discharging his duties as an employee of the State. Principles have been enunciated and guiding rules have been laid down by the Apex Court in the matter of awarding of compensation in motor accidents cases. In my view, the principles that have been made as a guiding factor for assessing compensation in the case of motor accidents claims can be usefully made applicable while awarding compensation to a person who is killed while he was under the employment of the State by smugglers or antisocial elements. Ultimately, what is required to be considered is what is the damage or the loss the victim of the incident or his legal heirs suffer on account of the injury caused to the victim or on account of his death. In the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Apex Court, after elaborately considering the law on the subject, has laid down the guiding factors that are required to be kept in mind by the Courts while determining the loss of dependency of the legal heirs on account of the death of a victim of the motor accident. The principles that are required to be kept in mind while determining the loss of dependency will not make any difference whether the death is on account of the motor accident or on account of any other untoward incident by an employee of the State while he is under employment. However, if a person is killed while he is under the employment of the State by the persons who intend robbing or clandestinely removing the property of the State and in that process, if the employee of the State tries to protect the property of the State and shows his valour and exposes his life for serious risk of being killed, in my view, it would be fair and reasonable to award some additional compensation depending upon the facts and circumstances of each case; and award of such compensation can be brought under the head "gallantry or valour". In my view, this principle has to be enunciated or evolved keeping in mind the larger interest of the State. If an employee of the State is

assured that if some untoward incident takes place and his life is taken away, his legal heirs would be properly compensated by the State, it would encourage the employees of the State to protect the property of the State with greater enthusiasm and courage; otherwise, there may be hesitation on the part of the employees of the State to protect the property of the State at the risk of their life. The fear for life and in the event of their death their family may be deprived of the source of livelihood, has to be taken care of and that can be done by evolving a principle for payment of compensation for the bravery or valour shown by the victim if he dies or is injured while protecting the property of the State. In a matter like this, in my view, whether the employee killed was in employment on daily wage basis or on permanent basis, will not make much of difference. Merely because the person killed, like late Patil, was only on daily wage basis, cannot deprive his legal heirs to claim compensation. The permanency of employment and promotional prospects in employment and uncertainty in continuance of employment may be the relevant factors that the Court will have to bear in mind while assessing the compensation. But, that cannot be a factor as noticed by me earlier, to deny compensation to the legal heirs of the victims like deceased Patil. In the light of the discussion made above, I am of the view that the petitioners are entitled to claim compensation in this petition from the respondents on account of the murder of deceased Patil while he was on duty.

11. Now, the next question is, what should be the actual quantum of compensation to be fixed in this case? Though Sri H.R. Vishwanath, in the course of the hearing of the petition, asserted that late Patil was about 30-31 years of age at the time of death, the representation dated 1-10-1993 given by the Karnataka Government Daily Wage Employees' Association, Haven Branch, a copy of which has been produced as Annexure-F, shows that late Patil was 35 years of age at the time of his death. The age of the wife of late Patil was shown as 27 years in January 1995. May be, as pointed out by Sri Vishwanath, the age of late Patil was roughly mentioned as 35 years in the representation given by the aforesaid Association. However, it is relevant to point out that there is no specific averment made in the petition indicating the age of late Patil at the time of his death. Under the circumstances, I am of the view that it would be reasonable to hold that late Patil was about 33 years of age at the time of his death. Then, the next question is, what should be the multiplier that is required to be applied? It is not in dispute that late Patil has left behind him his wife, who was around 27 years, and two minor children aged about 8 years and 5 years, and the mother aged around 60 years. During the pendency of the proceedings, the wife of late Patil has also expired. There is no one who could effectively take care of the minor children and extend the same paternal protection and care which late Patil and his wife would have extended to them. Under these circumstances, I am of the view that it would be fair and reasonable to apply the multiplier of "16" (sixteen) in respect of the claim made by the petitioners.

12. Now, the other question is, what was the salary or income late Patil was getting at the time of his death? According to the respondents, late Patil was

drawing Rs. 24-65 per day. There is no specific averment made in the petition with regard to the wages late Patil was getting at the time of his death. It is not in dispute that he was a young man and it is common knowledge that even an agricultural labourer or other labourer gets around Rs. 50 to Rs. 60/- per day as wages. Though the Government Order dated 6-8-1990 does not apply to the case of late Patil for regularisation, since Sri Patil was in continuous service for over 7 years, it clearly indicates that there was work for a Forest Watcher in the Department and in that background, his continuing in service for more than ten years is not ruled out. This Court, in the case of Premakala Shetty v CCA, PCA and RB Bank, has given a direction to consider the case of such of those daily wage employees who have put in more than ten years of service even if they were not in service as on 1-7-1984. Therefore, the possibility of late Patil getting his service regularised if he were to live, in the cadre of Forest Watcher/ Watchman is also not ruled out; and in that event, he would be drawing more than Rs. 3,000/- per month. Further, even otherwise, if some margin for enhancement of daily wages over the years is given, it would be fair and reasonable to fix the daily wages of deceased Patil at Rs. 40/- per day; and in that event, his monthly gross income would be Rs. 1,200/-. Out of the said amount, if one-third of the amount is deducted towards his personal expenses, loss of dependency of the family would be in a sum of Rs. 800/-; and it would be Rs. 9,600/- per annum. If multiplier of "16" is applied, it would be Rs. 1,53,600/-. To the said amount, it would be fair and reasonable to add, in all, Rs. 30,000/- towards loss of consortium, loss of estate and funeral expenses. Since there is no clear evidence with regard to the nature of "velour or risk taken" by late Patil; and the only material that is available on record, that he was murdered by forest wood smugglers and the letter dated 1-1-1992 of his higher Officer, a copy of which has been produced as Annexure-E, which is not disputed by the respondents, shows that late Patil was strictly instructed to keep a watch on the forest produce, I am of the view that it is fair and reasonable in the facts and circumstances of the case, to fix the quantum of compensation under the head "velour or risk of life or gallantry" by an employee of the State at Rs. 25,000/-. However, it is necessary to point out that the compensation to be awarded under the head "velour or risk of life or gallantry" for protecting the property of the State, to the victim who is an employee of the State, to the injury caused to him, or in the event of his death or murder, to his legal heirs, would depend upon the facts and circumstances of each case, the nature of velour and risk exhibited by such an employee or the effort made by him to protect the interest of the State. Thus, the total compensation payable to the legal heirs of late Patil would be in a sum of Rs. 2,08,600-00.

13. Now, the question is what should be the rate of interest payable on the quantum of compensation? Late Patil was killed on 15-9-1993. Representations were made by the widow of late Patil as far back as in the year 1993. In the case of Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, , the Supreme Court has held that award of interest at 12 per cent per

annum is reasonable. In the case of Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others, , in the case of Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, ; and in the case of General Manager, Kerala State Road Transport Corporation, supra, the Supreme Court has affirmed the rate of interest at 12 per cent granted by the High Courts from the date of the petition till the date of payment. Therefore, I am of the view that it would be fair and reasonable to award interest on the compensation to be awarded at 12 per cent per annum from the date of her representation to the Deputy Commissioner, Dharwad, i.e., 29th of October, 1993.

14. Now, one other question that remains to be considered is. whether any direction is required to be given by this Court to protect the interest of the petitioners by making appropriate orders to safeguard the compensation awarded. Petitioners 1(a) and 1(b) are minors. They are re-presented by their guardian and grandmother, the second petitioner. The vakalatnama signed by the second petitioner shows that she is an illiterate lady. She is also an old lady. Under these circumstances, I am of the view that it is desirable to make appropriate orders to protect the interest of the petitioners and the amount awarded to them by way of compensation in the light of the principle laid down by the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, supra. In the said case, the Supreme Court has observed as follows:

". . . . In a case of compensation for death, it is appropriate that the Tribunals do keep in mind the principles enunciated by this Court in Union Carbide Corporation Vs. Union of India, etc. etc., , in the matter of appropriate investments to safeguard the feed from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptible to exploitation. . . .".

Therefore, I am of the view that except a sum of Rs. 25,000/- out of the total compensation payable to the petitioners, the entire amount should be invested in Fixed Deposit initially for a period not less than five years and to be renewed thereafter till petitioners I(a) and I(b) attain the age of 21 years. The petitioners are permitted to draw the interest payable on the said amount. The respondents are directed to deposit the amount awarded within four weeks from today before this Court. On such deposit being made, the Registrar (Judicial) is directed to invest the said amount in a Fixed Deposit, as directed above, in a Nationalised Bank very close to the place of residence of the petitioners, with instructions to the Branch Manager to make the payment of interest to be accrued, either every month or once in three months, to the guardian of the petitioners. The learned Counsel for the petitioners is also directed to file a memo before the Registrar (Judicial) indicating the Bank and the place in which the amount should be invested in Fixed Deposit, within four weeks from today. Liberty is also reserved to the petitioners to move this Court for release of the money to be kept in Fixed Deposit in case of need for the purpose of the education of petitioners I(a) and I(b) or for any other purpose which would be in furtherance of the interest of

petitioners I(a) and I(b).

15. The petitioners are also entitled for the costs of this petition, which is fixed at Rs. 2,500/-.

16. In terms stated above, this petition is allowed and disposed of. Rule issued is made absolute.