
(2016) 01 GAU CK 0041
In the Gauhati High Court
Case No : W.P(C) No. 31 (K) of 2011

T. Noktang, G.B.

APPELLANT

Vs

State of Nagaland & Others

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Citation : (2016) 2 GauLT 1106

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : T. Aao, Advocate, for the Appellant; K. Wotsa, Sr. GA, for the Respondent

Final Decision : Disposed Off

Judgement

Suman Shyam, J.—Heard Mr. Tali Aao, learned counsel appearing on behalf of the petitioner. Also heard Mr. K. Wotsa, learned Sr. Govt. Advocate, Nagaland representing the State respondents. None appears for the proforma respondent.

2. The petitioner's case in brief is that he is a Gaon Burah in Longleng Town of Nagaland and a businessman by occupation. On 03.12.2008 when the petitioner, being accompanied by other workers engaged in the work of construction of a residential building of the proforma respondent, was taking rest on the ground by the side of the brick boundary wall fencing of the office of the respondent No. 4, a portion of the wall suddenly collapsed and fell upon the petitioner and another person named Lingpa Phom causing grievous injury to both the persons. It has been stated that the petitioner had suffered fracture and lumbosacral spine injuries besides suffering blunt injuries on the head and abdomen. Soon after the incident, the petitioner was rushed to the District Hospital at Longleng and after the initial treatment given to him at the hospital, the petitioner was discharged from the said hospital on 06.12.2008 referring him to Dr. Imkongliba Memorial District Hospital, Mokokchung for better treatment.

3. It is the case of the petitioner that although he had suffered grievous injuries in the said incident yet, due to financial problems he could not go outside for better treatment and had to remain satisfied with the treatment rendered by the local "Kabiraj". During the course of such treatment the condition of the petitioner deteriorate further as a result of which he was advised to go for better medical treatment, which he could not afford. The petitioner has further stated that owing to the injuries suffered in the incident of wall collapse that had taken place on 03.12.2008, the petitioner had to remain bedridden for almost 3 months but still could not recover completely and is presently suffering from pain in his lower body preventing the petitioner from doing hard physical work. Thus, according to the petitioner, the accident has resulted into permanent physical disablement to the extent of 30%. The petitioner has also stated that during the course of treatment he had incurred an expenditure of Rs. 50,000/-. However, due to lack of ignorance no bill or voucher of such medical expenditure has been retained by him. It has further been stated that due to ignorance of the petitioner no FIR had been lodged reporting the said incident to the police.

4. It is the case of the petitioner that the brick wall constructed by the respondent No. 4 had collapsed upon the petitioner and other person solely due to lack of maintenance of the same by the concerned authorities. As such proper maintenance of the wall was the duty and responsibility of the respondent No. 4. As such, according to the petitioner the present is a clear case of negligence on the part of the official respondent in failing to maintain the boundary wall in a proper manner. It has further been contended that since the petitioner suffered permanent disability due to the negligent act of respondent No. 1 to 4, hence, they are liable to pay adequate compensation to the petitioner on such count. On the basis of such pleadings the petitioner has claimed an amount of Rs. 7,26,000/- as total compensation on the following heads:

(a) Expenses in medical treatment Rs. 50,000/-.

(b) Compensation for the injuries caused resulting to about 30% permanent bodily disablement assessed at the loss of 30% of earning capacity which comes to Rs. 3000/- per month or Rs. 36,000/- per annum multiplied by 16, it would be Rs. 5,76,000/-.

(c) Compensation for pain, suffering, inconveniences, loss of enjoyment and amenities of life Rs. 50,000/-.

(d) For future medical expenses Rs. 25,000/-.

(e) For loss of expectancy of life Rs. 25,000/-.

5. The respondent No. 1 to 4 have filed counter affidavit denying their liability to pay any compensation to the petitioner as claimed in the writ petition. Official respondents have also denied their negligence in the collapse of the wall and have stated that the unfortunate incident had occurred due to encroachment of Govt, land and dumping of heavy construction materials by the proforma

respondent adjacent to the fencing wall which has resulted to the collapse of the same. While denying the claim of the petitioner the respondents have also taken a plea that the writ petition is founded on several disputed questions of fact which can be adjudicated by a civil court and hence the writ petition is not maintainable in the facts and circumstance of the case.

6. Mr. Ao, learned counsel for the petitioner submits that the collapse of the wall on 03.12.2008 is not in dispute nor is it in dispute that the petitioner along with one Linga Phom who was taking rest in the ground by the side of the fencing had suffered grievous injuries due to the collapse of the such wall upon the aforesaid persons. Mr. Ao further submits that it is a matter of record that Linga Phom had ultimately succumb to the injuries sustained due to collapse of the wall. In such View of the matter the present is a case where the principle of strict liability would come into play and hence, State respondent would be bound to pay adequate compensation to the petitioner for the injuries suffered by him that has led to this permanent disablement.

7. Mr. Wotsa, learned Sr. Govt. Advocate, Nagaland, on the other hand, submits that the collapse of the wall in question had happened due to the negligence of the proforma respondent and not the departmental authorities. As such, liability, if any, to pay compensation would be that of the proforma respondent and not the department. He further submits that even assuming that the department is liable for the collapse of the wall even in that case the petitioner has failed to substantiate his claim by producing any supporting documents along with the writ petition. In that view of the matter the writ petition itself is not maintainable in the facts and circumstance of the case.

8. I have considered the submissions made by and on behalf of the learned counsel for the parties and have also perused the materials on record. A careful examination of the pleadings goes to show that the department is not denying the fact that the brick boundary wall fencing of the office premises of respondent No. 4 had in fact collapsed upon the petitioner and other persons on 03.12.2008. It is also a matter of record that one Linga Phom who had also suffered injury in the wall collapse along with the petitioner , had died due to the injuries suffered in the said incident. However, the department had not admitted that the writ petitioner had suffered any grievous injury in the said incident leading to his permanent disablement nor is there any material available for this court to draw such a conclusion.

9. The present is not a case of infringement of fundamental right of the petitioner guaranteed under Article 21 of the Constitution. The claim of the petitioner for payment of compensation is in the nature of a tortious action on account of injury allegedly suffered by him due the act of negligence on the part of the respondents. The petitioner has not been able to show infringement of any fundamental right. Therefore, even if negligence on the part of the respondents is established, award of compensation under the public law would not be proper in the absence of any proof of infringement of his fundamental right under Article

21 of the Constitution.

10. That apart, the petitioner has also failed to substantiate his claim of having suffered permanent disability to the extent of 30%. From the examination of the writ petition it can be seen that the petitioner has neither annexed any medical certificate in support of his claim of permanent disability nor have the bills and vouchers of the expenses incurred in connection with the medical treatment of the petitioner been produced by him. There is not even an iota of evidence available on record to support the claim of the petitioner in the writ petition. Since the state respondents have disputed the claim of the petitioner hence, the claim for compensation will have to be proved and established on the basis of proper evidence which is not possible in a writ proceeding. Although the petitioner has cited difficulties in approaching the civil court by stating that except the court of Dobhashis, there is no civil court at Longleng District, yet, the same cannot be a valid ground for this court to entertain a writ petition involving disputed questions of fact.

11. It is settled law that a claim involving disputed questions of fact cannot be entertained in a writ proceeding under Article 226 of the Constitution of India. As has been held herein before, the petitioner has failed to establish breach of any fundamental right as a result of the act complained of. As such, this writ petition is held to be not maintainable and accordingly, the same stands rejected. The petitioner would, however, be at liberty to seek appropriate remedy before the civil court.

12. With the above observations, the writ petition stands closed. No order as to cost.