
(2019) 12 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No. 4184 Of 2017

Uttam Sitaram Kose

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 39

Citation : (2019) 12 BOM CK 0029

Hon'ble Judges : R.K. Deshpande, J; Milind N. Jadhav, J

Bench : Division Bench

Advocate : S.N. Gaikwad, T. Khan

Final Decision : Allowed

Judgement

1] Rule made returnable forthwith.

Heard finally by consent of the learned counsels appearing for the parties.

2] The petitioner while working in his field on 25.10.2015 was attacked by 'wild boar'. As a result, he suffered injuries on upper portion of elbow of right hand and also on thigh of the right leg along with injuries on the chest. The petitioner was examined by the Medical Officer, Rural Hospital, Bramhapuri and was discharged on 27.10.2015. The Medical Superintendent of the Hospital has issued certificate dated 31.10.2015, stating that the injury suffered by the petitioner is grievous. On the basis of this certificate, compensation of Rs.1,00,000/- is claimed in terms of Government Resolution dated 30.03.2013. Though the medical expenses incurred by the petitioner are reimbursed, the compensation is denied. Hence, this petition.

3] We are unable to understand the stand taken by the respondent No.4 - the Forest Department that the petitioner has not suffered any grievous injury when the Medical Officer in the Rural Hospital of the Government has issued a certificate about the petitioner suffering from grievous injury.

4] In the decision of the Division Bench of this Court in case of Baburao Abaji Aglawe vrs. State of Maharashtra and ors, reported in 2012(3) ALL MR 646, after considering the provision of Section 39 of the Wild Life (Protection) Act, 1972 and the Government Resolution dated 02.07.2010, it is held in paragraph 12 and 13 of the said decision as under;

"12. Though, the provision declares that the wild animals are Government property, in the context of their protection from being hunted, we are of the view that the wild animals should be treated as Government property for all purposes. Therefore, if a wild animal cause loss to an agriculturist or a citizen, it would be the responsibility of the appropriate Government to make good the loss. In this country, it is settled law, even in relation to cattle that the amount is liable for their trespass upon unenclosed and for all naturally resulting damage, vide the Law of Torts by Ratanlal and Dhirajlal, 26th Edn. page 391, Shreehuree Roy v. James Hills, (1868) 9 WR 156.

13. Certainly, it would be open to a citizen to claim compensation for the loss caused by any wild animal, whether specifically referred to in any provision, Government Resolution or not. In fact, we find from the compensation policy framed by the Government that it enjoins farmers to protect the nests of Vultures from destruction and claim compensation for any loss suffered by them on account of having so protected the nests. There is no reason why same principle should not have been applied to the case of the petitioner, who protected the tigress who nurtured her cubs in an agricultural land of the petitioner. Eventually, the decision of the Finance Department for agreeing to grant compensation to the petitioner as recommended by the Forest Department, is correct in law."

5] In the another decision rendered by this Court in Writ Petition No. 4490 of 2017 (Kavita Ramesh Khobragade vrs. Government of Maharashtra and others), decided on 02.08.2019, it is held in paragraph Nos.2 and 3, as under;

"2. The Government Resolution dated 28.11.2016 deals with the compensation arising out of man and animal conflict and in case of death, the compensation is of Rs.5,00,000/-, in case of permanent disability, it is of Rs.4,00,000/- and in case of serious injuries, it is of Rs.1,00,000/-. The petitioner was admitted and treated in the General Hospital at Chandrapur for ten days. The certificate shows that as a result of Tiger attack, there are multiple lacerated simple wounds on the shoulder, arm, near axilla and the chest wall found on the body of the petitioner. The certificate further shows that there is no deformity in the body developed due to Tiger attack. The claim of the petitioner for compensation of Rs.1,00,000/- for the serious injuries is denied. Hence, this petition.

3. What is the "serious injury" is not defined under the Government Resolution dated 28.11.2016. It can be physical as well as mental. The mental injury or trauma as a result of "Terror-struck sudden Tiger attack", though invisible, is more grievous and serious in nature, when a man survives by narrow escape. It

is per-se serious and grievous injury. Mere imagination of Tiger attack gives someone creeps. The sufferings can be perceived only by a person who is the subject of attack. It is, therefore, hard to believe that there cannot be serious injuries due to Tiger attack."

6] In view of the aforesaid two decisions of this Court and the facts that Government Resolution dated 02.07.2010 expressly provides for the loss caused to an agriculturist by 'Wild Boar, Bear, Bison, Fox etc.,', we are of the view that the petitioner cannot be denied the compensation of Rs.1,00,000/- as has been claimed in this petition on the basis of Government Resolution dated 30.03.2013.

7] In view of above, this writ petition is allowed.

The respondents are directed to extend the benefits of Government Resolution dated 30.03.2013 read with earlier Government Resolution dated 02.07.2010, by granting the petitioner the compensation of Rs.1,00,000/- with interest at the rate of 6% per annum from the date when the compensation became due and payable till the date of payment. The payment be made within a period of three months from today.

Rule is made absolute in above terms. No order as to costs.