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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LETTERS PATENT APPEAL NO. 343/2010**

Date of order: 4nd May, 2011

GOVT. OF NCT OF DELHI Appellant
Through Ms. Ruchi Sindhwani & Ms.
Megha Bharara Advocates along with Mr.
Sunil Gupta, Law Officer, Tihar Jail.

Versus

GUDDO & ANOTHER Respondents
Through Ms. Aruna Mehta, Advocate.

LETTERS PATENT APPEAL NO. 344/2010

GOVT. OF NCT OF DELHI Appellant
Through Ms. Ruchi Sindhwani & Ms.
Megha Bharara Advocates along with Mr.
Sunil Gupta, Law Officer, Tihar Jail.

Versus

SHAFIRUN & ORS. Respondents
Through Ms. Aruna Mehta, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J.:

These two intra-Court appeals by Government of National
Capital Territory of Delhi arise out of a common judgment dated

2nd April, 2009 passed in Writ Petition (Civil) No. 7060/2003,
LPA Nos. 343/2010 & 344/2010

Smt. Guddo and Another versus The Superintendent, Central Jail, Tihar, New Delhi and Writ Petition (Civil) No. 5095-98/2005, ***Shafirun and Others versus The Superintendent, Central Jail, New Delhi***. The two writ petitions have been allowed and the respondents herein have been awarded compensation on account of death of Ram Avtar and Abdul Hafiz, who were lodged in Central Jail, Tihar.

2. The learned single Judge in the impugned judgment while allowing the writ petitions has referred to the Prisoners Act, Delhi Prisons (Medical Administration) Rules, 1988 and Delhi Jail Manual to hold that the appellants were negligent and has, inter alia, held as under:-

“16. Thus, it is unassailable that both the deceased had an indefeasible right to health which was implicit in their right to life under Article 21 of the Constitution of India. The custodial nature of their confinement a fortiori befitted them to greater protection and well-being from the respondents. The various provisions of the Delhi Jail Manual unequivocally suggest that protection of the health and well-being of a prisoner is an integral part of the efficient functioning of prison administration. It is also well-endorsed that untimely death resulting from negligence on the part of jail authorities is not a part of the penal policy of the State.

17. The various statutory provisions and administrative rules, enunciated in the paragraphs above, unequivocally suggest that the respondents' duty to protect the health and well-being of the deceased was strict and admitted no exceptions. I have no hesitation in stating that the respondents have not just been negligent, but compulsively and systemically negligent, in discharging their duties towards the deceased. The recidivist tendency of the respondents is apparent from the fact that there was negligence on their part not just at the stage of diagnosing the diseases but also at the stage of providing even the most immediate and accessible medicare to the deceased. Moreover, the facts and circumstances ensuing the filing of the present petitions are in themselves deplorable. The death of its two inmates was perhaps not enough to move the conscience of the jail authorities who continued to play truant by keeping the petitioners in dark about the real cause of death of the two deceased. It was only at the intervention of this Court on 22.3.2005 that the Jail Authorities produced the relevant documents, viz., post mortem and Inquest Report, etc., which revealed that Ram Avatar and Abdul Hafiz had succumbed to Tuberculosis and Bhroncal Pneumonia respectively. Merely stating that the deceased in the present petitions died a natural death cannot be used as a shield by the respondents to evade liability. It is common knowledge that both tuberculosis and broncho-pneumonia are neither terminal nor asymptomatic diseases. There is no doubt that if timely medical care had been provided to both Ram Avatar and Abdul

Hafiz, they would have not met their untimely death. The jail authorities were thus clearly negligent in their duty to provide medical help to the deceased for which they must now be liable to compensate the petitioners.”

3. Accordingly, it has been held that the legal representatives of Ram Avtar are entitled to compensation of Rs.6,15,686/- and legal representatives of Abdul Hafiz are entitled to compensation of Rs.6,56,879/- respectively. Interest @ 6% per annum has been awarded.

4. Learned counsel for the appellant has raised a number of contentions before us, including the method of computing compensation and the calculation of compensation. It is pointed out that Ram Avtar was undergoing trial under Section 363 of the Indian Penal Code, 1860 (IPC, for short) and was arrested on 9th July, 2002 and had expired on 18th September, 2002. He was provided medical attention on 10th July, 2002 and 17th July, 2002. On 17th July, 2002 he had taken regular meal at dinner time and had gone to sleep without any complaint. On 18th September, 2002, he did not respond and wake up and a doctor was immediately called but was declared dead at 5.32 a.m. Post-mortem and inquest proceedings were conducted. The

post-mortem does not show foul play or any injury. The inquest report refers to statement of several prisoners and the brothers of the deceased. It is stated that Ram Avtar as per the post-mortem died due to pulmonary tuberculosis, which is a natural cause. His brothers did not state that Ram Avatar was suffering from the said disease or had complained about any such decease or chronic ailment. Referring to the findings recorded by the learned single Judge in paragraphs 16 and 17 it is submitted that the said findings do not show or make out a case of negligence. Learned counsel for the appellant also relied upon medical literature and had drawn our attention to some articles on diagnosis in case of pulmonary tuberculosis.

5. Our attention is also drawn to affidavit filed by Dr. B.C. Jain, who had examined the medical prescriptions and the post-mortem report, etc. It is stated that his affidavit is entirely vague and there is no evidence or material to show that Ram Avtar had ever complained of the said ailment or shown or displayed clinical symptoms that he was suffering from the said ailment.

6. On the question of quantum of compensation awarded to Ram Avtar, it is pointed out that in the writ petition compensation

of Rs.5,00,000/- was prayed for. It is further submitted that the compensation should not have been calculated by applying the multiplier or the table mentioned in the Motor Vehicles Act, 1988. It is further submitted that the conventional figure has been wrongly computed by applying Consumer Price Index and benefit of future prospects have been given. Questions are also raised on the multiplier of 17, which has been applied.

7. In the case of Abdul Hafiz, it is pointed out that he was 40 years old and was a life convict under Section 376/342 of the IPC. He was arrested on 2nd April, 2000 and expired on 25th October, 2002. He was given treatment from time to time for pain in abdomen and was also attended to by Specialist (Psychiatrist). On 25th October, 2002 at about 12.10 p.m. he was admitted to Central Jail Dispensary by co-prisoners on medical call and thereafter taken to DDU Hospital emergency at 1230 hours. He expired at 2030 hours on 25th October, 2002. In his case also post-mortem and inquest proceedings were conducted. As per the final opinion of Dr. L.K. Baruah, DDU Hospital and Dr. Alexander F. Khakha of Safdarjung Hospital, death of Abdul Hafiz was due to bilateral broncho-pneumonia. The inquest report, which has been placed before us, there were

no anti-mortem external injuries. No foul play was suspected by the wife and co-inmates of the deceased in jail. The treatment given has been highlighted. It is submitted that the learned single Judge did not notice several aspects, including the conviction and the sentence of life imprisonment.

8. On the question of quantum of compensation also, several objections have been raised, including the method of computation, the multiplier applied, benefit of future prospects, etc., which have been given. It is pointed out that in the case of Abdul Hafiz, who was 40 years of age and a life convict, compensation of Rs.6,56,879/- has been awarded whereas in the case of Ram Avtar, who was 22 years of age, compensation of Rs.6,15,686/- has been awarded.

9. Learned counsel for the respondents, on the other hand, has submitted that once Ram Avtar and Abdul Hafiz were detained and were admitted to Central Jail, Tihar, it was duty of the appellant to take care and provide all medical treatment. The appellants should have, as held by the learned single Judge, carried out diagnostic tests, etc. On the question of

quantum of compensation, reference was made to the findings and the reasoning given by the learned single Judge.

10. There is no doubt that both Ram Avtar and Abdul Hafiz once in jail should have been given proper medical attention and treatment. However, number of questions and issues do arise with regard to medical health and the reason and cause why they expired. Ram Avtar, younger in age but as per the post-mortem report he was suffering from pulmonary tuberculosis. He was admitted to jail on 9th July, 2002 and had expired on 18th September, 2002. There is no evidence or material that prior to his arrest he was taking any treatment for the said decease. We find that the medical evidence on his death is sketchy and not clear. Whether or not pulmonary tuberculosis could have been diagnosed, even if the patient was not suffering from fever or clinical symptoms, is a matter of debate. In the case of Abdul Hafiz also several issues arise including quantum of compensation as he was 40 years old.

11. We were inclined to go into all the said aspects and, if required, ask for specialist or doctor's opinion. On the last date, Ms. Ruchi Sindhwani, who is appearing for the appellants, had

requested for some time to obtain instructions. Today, during the course of hearing, Ms. Ruchi Sindhwani on instructions has stated that the appellants are ready and willing to make ex-gratia payment of Rs.4,00,000/- to the legal representatives of Ram Avtar and Rs.3,50,000/- to the legal representatives of Abdul Hafiz but this should not be construed as an admission or fault or negligence.

12. Learned counsel appearing for the respondents, however, has some reservations to the said figure and has prayed that Rs.50,000/- should be added to the above figures. However, we feel that the gesture to make ex-gratia payment and figure given by the appellants should be accepted. We refrain from elaborating and go into all aspects/issues which have been elaborated above in view of the statement of the appellants. We accordingly dispose of the above appeals with the direction that the appellants should make payment of Rs.4,00,000/- to the legal representatives of Ram Avtar and Rs.3,50,000/- to the legal representatives of Abdul Hafiz within four weeks from the date of this order.

13. Abdul Hafiz is survived by his widow who is the natural guardian of his three minor children who were aged 10 years, 8 years and 6 years respectively at the time of filing of this appeal. It is directed that the compensation amount be divided equally amongst the four legal representatives. In the case of Ram Avtar, he is survived by his widow and a minor daughter. The amount of compensation is to be divided equally between the two. The payments will be made directly to the bank account of the legal representatives.

14. The disbursement of compensation shall be done in such manner that the legal representatives who are above the age of 18 years on the date of passing of this order will be paid 25% of their share. The balance amount will be kept in FDRs and will be paid after 3 years. The legal representatives who are minor on the date of passing of this order will be paid 25% of their share of the compensation amount when they attain the age of 18 years and the remaining amount will be kept in FDRs and be paid to them after 3 years. Interest accruing on

the said FDRs will be paid periodically to all the legal representatives.

The appeals are disposed of.

SANJIV KHANNA, J.

CHIEF JUSTICE

**MAY 04, 2011
VKR**