

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1514 of 2019

Smt. Jamuna Bai Wd/o Late Morajdhavaj Athanagriya, Aged About
32 Years, R/o Village And Village Panchayat Badhbhum, Tehsil
Dongargaon, District Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of
Revenue And Disaster Management, Mantralaya, Mahanadi
Bhawan, Atal Nagar, District Raipur, Chhattisgarh
2. Deputy Secretary, Department Of Revenue And Disaster
Management, Mantralaya, Mahanadi Bhawan, Atal Nagar, District
Raipur, Chhattisgarh
3. The Collector Rajnandgaon, District Rajnandgaon, Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat - Dongargaon District
Rajnandgaon, Chhattisgarh
5. Sarpanch, Village Panchayat, Badhbhum, Tehsil- Dongargaon,
District Rajnandgaon, Chhattisgarh

-----Respondents

For Petitioner	:	Mr. Shobhit Koshta, Advocate
For State	:	Mr. Raghvendra Verma, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17.09.2020

1. The present writ petition has been filed seeking for appropriate
compensation from the respondents on account of the death of the
husband of the petitioner due to bite of a stray/ rabid dog.
2. Facts in a nutshell relevant for disposal of the present writ petition

are that the husband of the petitioner namely Morajdhavaj Athanagriya, aged around 36 years was bitten by a stray/rabid dog. In the course of treatment, the husband of the petitioner died on 25.02.2018. Subsequently, the petitioner approached the District Administration seeking for compensation on account of the unnatural death which occurred in the family of the petitioner. The District Collector, however, after perusal of the representation of the petitioner vide Annexure P-3 dated 18.03.2019 has rejected the claim of the petitioner on the ground that the Revenue Book circular of the State Government does not provide for any compensation to be paid under such circumstances.

3. The contention of the counsel for the petitioner is that of late, the menace of the stray dogs has increased widely in the State of Chhattisgarh and that the District authorities as also the State authorities do not take any proper steps to ensure that the stray /rabid dogs are not allowed to roam freely in the area, as there are all likelihood of these stray/rabid dogs biting the general public at large causing great inconvenience and difficulties. According to the counsel for the petitioner, the incident that occurred was an unnatural incident which could not have been foreseen by anybody and thus can be safely brought within the ambit of a natural disaster and the incident that occurred because of the nuisances which could not be controlled by the District Administration thereby putting the lives of the common citizens in danger and also injurious to health of others.

4. According to the counsel for the petitioner, the rejection of

representation of the petitioner claiming monetary compensation by the Collector was totally bad-in-law and it reflects the insensitivity of the authorities towards such a menace which cost the life of a two years old child of the petitioner.

5. Shri Raghvendra Verma, Dy. Government Advocate appearing for the State argued that since there is no provision for payment of compensation under the Revenue Book Circular, the claim of the petitioner has been rightly rejected by the Collector. The State counsel does not make any other submission nor does he try to give any other explanation or justification by which the State would not be held responsible for payment of compensation.
6. From the pleadings that have been made and submitted by the counsel appearing on either side, the fact which is undisputed is that the husband of the petitioner namely Morajdhavaj Athanagriya was bitten by a stray dog. The age of the victim was 36 years at that time. The victim was therefore taken to the hospital where after a prolonged treatment, he ultimately succumbed to the bite on 25.02.2018. Subsequently, the petitioner had approached the District Administration for grant of compensation, if any, however, vide Annexure P-3, the District Collector rejected the same on the ground that Revenue Book Circular does not provide for grant of any compensation under such circumstances. It is then that the petitioner has approached this Court seeking for appropriate relief.
7. It is also not in dispute that except for the ground that the Revenue Book Circular does not provide for any such provision for

payment of compensation, there does not seem to be any other ground raised by the respondents in their defence and in their reply. Even in the course of argument also, the State Counsel has only raised the objection of there being no provision in the RBC.

8. It would be relevant at this juncture to take note of the judgment of this Court under similar circumstances i.e., WPC No. 1856 of 2018 in the case of *Shobha Ram vs State of Chhattisgarh* decided on 10.10.2018. In the said case, the victim was the wife of the petitioner and victim was working as a labourer. Though in the said case, District Collector had already paid an amount of Rs. 1.5 lac towards medical expenses incurred and further amount of Rs. 40,000/- was paid under the *Mukhyamantri Swechha Anudaan*. Yet the High Court entertained the writ petition and allowed the same and ordered for payment of compensation of Rs. 10 lacs. While deciding the said issue, this Court in the said judgment of *Shobha Ram (supra)* has dealt with all the judicial pronouncements made in the recent past on the subject matter. Therefore, it becomes imperative on the part of this Court to refer to those paragraphs, which for ready reference are reproduced here-in-under:

“6. Annexure – ‘F’ is the circular issued by the Department of Revenue and Disaster Management, Government of Chhattisgarh contained in Part 6 S. No.4 of the RBC as 4 amended up to 9-6-2015. Clause Five Schedule One of the RBC provides for financial assistance to the immediate successor of the deceased, who has suffered loss of life on account of natural calamity, natural

disaster or for natural reasons like falling in pit, snake bite, scorpion bite, guhera (wild reptile), bee bite, drowning in river, tank, dam, well, canal, nala, boat accident, blast of cooking gas cylinder, capsizing of mines, sunstroke, etc. If the death occurs for these reasons a sum of Rs. 4,00,000/- is to be awarded to the successor of the deceased. It also says that on receiving information of such death the Sub Divisional Officer (Revenue), Tahsildar or Naib Tahsildar shall visit the spot to ascertain the reasons for death and wherever possible the deceased shall be examined by Physician. When the death is found to have taken place on the happening of above mentioned calamities the Collector shall sanction the amount of financial assistance. It further says that death due to accidental burning and on account of thunder shall also include in natural calamity. Thus, the RBC does not provide for sanction of financial assistance of Rs.4,00,000/- on account of death due to stray dog bite.

8. In **Anupam Tripathi v Union of India and Others**¹ and other connected matters the Supreme Court was considering conflicting issues brought before it by way of several petitions. On the one hand petitions have been filed for direction to the concerned State to control stray dogs, the other raised the issue of indiscriminating killing of stray dogs amounting to cruelty to animals. The Supreme Court referred to the provisions of the Prevention of Cruelty to Animals, Act, 1960 (for short 'the PCA Act') and Animal Birth Control (Dogs) Rules, 2001 (for short 'the Rules, 2001'). The Supreme Court eventually constituted a committee to maintain complaints regarding injuries sustained by the persons in the dog bite, the nature and gravity of the injury,

¹ (2016) 13 SCC 492

availability of medicines and the treatment administered to them, the failure of treatment and its cure and in case of unfortunate death, the particulars of the deceased and the reasons behind the same. The Supreme Court observed that on the basis of the report of the committee, subject to adjudication of the responsibility of the State, it would be in a position to think of granting of compensation.

9. In **Shakuntala v Govt of NCT of Delhi & Anr.**² the High Court of Delhi was considering death of a roadside Redi/Thela (hand-cart) operator, a fruit vendor, as he was mauled by two fighting bulls. After referring to the provisions contained in Section 298 of the Delhi Municipal Corporation Act, 1957 and Section 202 of the New Delhi Municipal Council Act, 1994 and various decisions of the Supreme Court and other High Courts, it was held by the High Court of Delhi that the respondents are liable to compensate the petitioner in that case as the respondents were either negligent or indifferent towards their statutory duties. The High Court of Delhi awarded a sum of Rs.10.00 lacs towards compensation.

10. In **Sanjay Phophaliya v State of Rajasthan and Ors.**³ relying on **L.K. Koolwal v State of Rajasthan and Ors.**⁴ it was observed thus :

"It is primary, mandatory and obligatory duty (sic duty) of Municipality to keep city clean and to remove insanitation, nuisance etc. The Municipality cannot take plea whether funds or staff is available or not."

It was further observed that -

"9. It is a serious matter when the dogs and other

² WPC No. 13771 of 2006 decided on 01.07.2009

³ AIR 1998 Raj. 96

⁴ AIR 1998 Raj. 2

animals suffering from rabies bite animals and persons. The duty becomes more onerous on the respondents with regard to the dogs and such animals. The staff cannot say that its duty is complete if action is taken only on complaints. They must not sit in the office but should continuously take round of the city. If any inaction is found on the part of the staff, the respondents are bound to take disciplinary action against such staff. If still any accident happens, then the injured person or relative of the deceased person would be competent to invoke the provisions of Section 188 of IPC against such a negligent staff. It is expected that the roads of Jodhpur be cleaned from these stray animals within a period of four months from today. The respondents would be free to get work through contractors."

11. In **Milkmen Colony Vikas Samiti v State of Rajasthan & Ors.**⁵ the Supreme Court directed the Municipal Corporation of Jodhpur to remove unattended stray animals, such as, stray cattle, bulls, dogs, pigs etc. from the city of Jodhpur.

12. In **Col. Dharamvir Kataria v Union of India and Others**⁶ the High Court of Delhi awarded compensation when the petitioner's wife died due to fall in a pit of a lift installed by M/s. Bharat Bijlee Limited under the supervision of CPWD.

13. In **D.K. Basu v State of W.B.**⁸ it has been laid down by the Supreme Court that grant of compensation in proceedings under Article 32 & 226 of the Constitution of India for the established violation of fundamental rights

⁵ AIR 2007 SC 1046

⁶ AIR 1999 Delhi 291

⁸ (1993) 2 SCC 746

guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family.

14. In *Nilabati Behera (Smt.) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) v State of Orissa and Others*⁸, it was held that the primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve new tools to give relief in public law by moulding it according to the situation with a view to preserve and protect the rule of law.

15. In ***Nilabati Behera*** (supra) the Supreme Court quoted the first Hamlyn Lecture in 1949 under the title 'Freedom under the Law' where Lord Denning had said as under :

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence...This is not the task for parliament....The courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country."

23. In the matter of In **Reference Court on its own motion (Regarding Death of Ku. Divya Verma, D/o Shri Ashok Verma due to Rabies) v State of Chhattisgarh & Another**⁹ by order dated 22-8-2017 this Court, while entertaining the suo motu PIL, has allowed compensation of Rs.10,00,000/- to the mother of the deceased who died on account of attack by street dog. Prayer for modification of the said order subsequently rejected by order dated 12-9-2017.

9. Now coming to the facts of the present case since the only stand that the State counsel has taken is non-availability of the

⁹ WP PIL No. 24 of 2017

provisions of RBC. Under such circumstances, it would be relevant to refer to paragraph 6 of the judgment passed in the case of Shobha Ram reproduced in the preceding paragraph. Clause 5 of Schedule 1 of the R.B.C provides for financial assistance to the immediate successors of the deceased who has suffered loss of life on account of natural calamity, disaster or reasons like falling in a pit, snake bite, scorpion bite, attack of wild reptile (Guhera), bee bite, drowning in a river, tank, dam, well, canal, nala, boat accident etc. Likewise, similar financial assistance was also available to victims for blast of cooking gas cylinder, capsizing of mines, sun stroke etc.

10. The very fact that the State authorities principally accepted to pay compensation to successors of the deceased who has suffered loss of life due to snake bite, scorpion bite, attack of wild reptile (guhera), bee bite etc. means that the State intended to compensate the people in the event of such unnatural attack by the animals, reptiles and bees etc.

11. Once the State Government principally accepts to compensate the victims of such untoward incidents, there is no reason why the victim of a stray/ rabid dog left loose in the society by the respondents without any control whatsoever should not be taken into consideration for grant of compensation invoking the same provision of Clause 5 of Schedule 1 of the RBC. There can be no doubt on the fact that it is ultimately the duty and responsibility of the concerned civic body to ensure that the people living in the society are protected from such attacks and for which all

necessary precautionary steps have to be taken by the civic body.

If the concerned civic body is unable to take remedial steps in this regard, then under the circumstances, if any such untoward incident does occur, the respondents would be vicariously liable for compensating the victims or the successors of the deceased persons.

12. Of late, there has been a great increase in the incidents of stray dog bites. Yet the civic bodies are not taking prompt and proper action to control the same. It is a bounden duty rather a primary, mandatory and obligatory duty of the civic body to keep the city free from nuisances, in addition to other duties casted upon them. Even the Hon'ble Supreme Court also in the case of Milkmen Colony Vikas Samiti (supra), which has been referred to in the case of Shobha Ram had issued specific instructions to the Municipal Corporations to remove unattended stray animals including the stray cattle, bulls, pigs, etc. from the city. Similar duty is casted upon the local body here also in the State of Chhattisgarh.

13. In view of the aforesaid judicial pronouncements that have been referred to in the case of Shobha Ram and the decision of the case of Shobha Ram, this Court is of the opinion that the petitioner in the present case also is entitled for compensation and the liability of payment shall be on the Respondent no. 3.

14. Coming to the question of an appropriate compensation that could be paid to the petitioner. First of all, the age of the deceased

was 36 years at the time of incident, whereas in the case of Shobha Ram decided by this Court, the deceased was a middle aged grown up lady.

15. Considering the fact that the petitioner in the present case is the wife of the deceased and that the deceased was the sole bread earner in the family and the petitioner as well as their children were dependent upon the deceased and on the date the deceased died he was aged only around 36 years, this Court is of the opinion that a lump sum compensation of Rs.7,50,000/- in the present case also would be just and appropriate and it is ordered accordingly.
16. The respondent no. 3 is, therefore, directed to ensure that the amount of compensation awarded by this Court is disbursed to the petitioner at the earliest, preferably within a period of ninety days from the date of receipt of copy of this Order.
17. With the aforesaid observation and direction, the present Writ Petition stands disposed off.

**Sd/-
(P. Sam Koshy)
Judge**