

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 05.12.2022
DELIVERED ON: 23.12.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

FMA NO. 3613 OF 2015

WITH

IA NO. CAN 01 OF 2015 (OLD CAN 10477 OF 2015)

WITH

I.A. NO. CAN 02 OF 2022

SMT. NIRMALA CHAKRABORTY

VERSUS

THE STATE OF WEST BENGAL & OTHERS

Appearance:-

Mr. Raghunath Chakraborty, Advocate.

Mr. Mehboob Ahmed, Advocate.

.....For the Appellant

Mr. Tapan Kumar Mukherjee, Learned A.G.P

Ms. Tuli Sinha, Advocate.

.....For the State

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This intra court appeal is directed against the order dated 17.07.2015 passed in WP No. 8925 (W) of 2009 filed by one Smt. Nirmala Chakraborty. The said writ petition was filed challenging an order passed by the respondents declining to grant compensation for the loss suffered by the writ petitioner due to the murder of her son by a police personnel. The learned Single Bench by the impugned order came to the conclusion that the son of the writ petitioner had been brutally murdered by the police personnel and compensation is payable in the public law field as there has been infringement of Article 21 of the Constitution of India. All the findings recorded by the learned Writ Court are wholly in favour of the writ petitioner. Ultimately the court came to the conclusion that the writ petitioner is liable to be compensated by the respondents and accordingly held that a lumpsum compensation of Rs. 3,00,000/- would meet the ends of justice. The writ petitioner being aggrieved by the quantum of compensation awarded has filed the present appeal. During the pendency of the appeal, the writ petitioner died on 16.10.2020 and her three sons were brought on record as the legal heirs of the deceased writ petitioner. During the pendency of the appeal one of the sons Mr. Moloy Chakraborty died on 15.07.2022 and he was deleted from the array of parties thus leaving two of the sons of the writ petitioner as the appellants who are the legal heirs of the deceased.
2. We have heard Mr. Raghunath Chakraborty, assisted by Mr. Mehboob Ahmed, learned Advocates for the appellant and Mr. Tapan Kumar

Mukherjee, Learned A.G.P assisted by Ms. Tuli Sinha, learned Advocate for the State.

3. The writ petitioner's son Sanjay Chakraborty and two of his friends were returning from Shrirampur to Belur through G.T. Road at midnight on 03.09.2003 when they were flagged down for checking by three men who identified themselves as police personnel. Two of the friends of Sanjay Chakraborty stopped their vehicle for such checking. However, Sanjay Chakraborty did not stop and proceed further riding his motor cycle. It appears that one of the persons who were checking the vehicles had informed the police constable Purnendu Samantaa over mobile phone informing him that Sanjay Chakraborty had defied their signal to stop. Ultimately Sanjay Chakraborty was found dead. A complaint was lodged on 04.09.2003 about 5:30 AM by Samiran Ghosh on the basis of which the case was registered in P.S. Case No. 128 of 2003 under Section 304 of the Indian Penal Code (IPC). After investigation the final report was submitted under Section 302 IPC against Purnendu Samanta and thereafter a supplementary charge sheet was filed 05.05.2004. During the pendency of the trial, the second respondent appointed the Deputy Magistrate and Deputy Collector, Shrirampur, Hooghly to hold an executive enquiry into the police firing and an enquiry was conducted under Regulations 157 of the Police Regulations of Bengal, 1953 and the findings of such enquiry was submitted in the form of report to the second respondent on 04.02.2008 but thereafter no follow up action was taken by the respondent. The criminal trial in SC No. 204 of 2005 ended in conviction of Purnendu Samanta convicting him to undergo life imprisonment and to pay a fine of Rs.

10000/- in default to suffer rigorous imprisonment for two more years. Thereafter on 03.12.2008 the writ petitioners submitted a representation to the second respondent seeking compensation for the murder of the son. Since there was no response, the writ petitioner approached an organization which had also submitted a representation to the second respondent. Since these representations were not acted upon, writ petition was filed praying for issuance of a writ of mandamus to direct the respondent and in particular the second respondent to pass an order awarding compensation to the writ petitioner for the brutal murder of her son considering her representations. As mentioned earlier, the learned Single Bench taking into consideration the facts of the case held that the writ petitioner was entitled for compensation but restricted the amount to Rs. 3,00,000/- complaining that the amount is inadequate, the writ petitioner has filed the present appeal.

4. The law on the subject as regards awarded of compensation under Article 32 and 226 of the Constitution of India is well settled. In ***Nilabati Behera Versus The State of Orissa***¹, the Hon'ble Supreme Court held that when there was a violation of the personnel liberty under Article 21 of the Constitution compensation for deprivation of the fundamental right can be awarded under Article 32 of the Constitution of India. It was pointed out that when such a claim is made by the petitioner they could be relegated to the ordinary remedy of a suit if the claim to compensation was factually controversial in the sense that a civil court may or may not uphold such claim. In such circumstances, it was held that refusal by the court to pass

¹ 1993 (2) SCC 746

an order of compensation in favour of the petitioner will be doing mere lip service to the fundamental right to liberty which the State Government had so grossly violated.

5. In ***D.K. Basu Versus State of West Bengal***², the Hon'ble Supreme Court pointed out that Article 9(5) of the International Violation on Civil and Political Rights, 1966 provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". It was further pointed out that there is indeed no expressed provision in the Constitution of India for grant of compensation for violation of the fundamental right to life, nonetheless the court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. It was further pointed out that grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21 of the Constitution of India is an exercise of the courts under the public law jurisdiction for penalizing 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 right of citizens. Further it was held that 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

² 1997 AIR (SC) 610

wounds of the family members of the deceased victims who have been the bread winner of the family. In ***Railway Board Versus Chandrima Das***³, it was held that where public functionaries are involved and the matter relates to the violation of fundamental rights or enforcement of public duties, the remedy will be available under the public law notwithstanding that a suit to be filed for damages under private law. In ***M.S Grewal Versus Deep Chandra Sood***⁴, the Hon'ble Supreme Court after referring to the decision in ***D.K. Basu*** held that law courts will lose its efficacy if it cannot possibly respond to the need of the society and can technicalities there might be may but the justice oriented approach ought not to be thwarted on the basis of such technicalities since technicalities cannot and ought not to out weigh the cause of justice. Further it was held that the judicial concerns stands on footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of civil courts obligations to award damages which was held to be an old draconian concept taking note of the change of judicial attitude. In ***Suresh Versus State of Haryana***⁵, the Hon'ble Supreme Court held that in cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 of the Constitution is established, the courts may award compensation in a proceeding under Article 32 or 226 of the Constitution. Further it was pointed out that before awarding compensation the court will have to pose to itself the following questions:-

(a) Whether the violation of Article 21 is patent and incontrovertible

³ 2000 (2) SCC 465

⁴ 2001 AIR (SC) 3660

⁵ 2015 AIR SC 518

(b) Whether the violations is gross and of such magnitude to shock the conscious of the court

(c) Whether the custodial torture alleged has resulted in death or

(d) Whether the custodial torture is supported by medical report or visible marks or scars or disability.

6. In ***Suresh Versus State of Haryana***⁶, the Hon'ble Supreme Court took note of the fact that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify the maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District Legal Services Authority. Further it was pointed out that even though almost five years (prior to 2014) had expired since the enactments of Section 357A of the Criminal Procedure Code, the award on compensation has not become a rule and interim compensation, which is very important is not been granted by the courts and the upper limit of compensation fixed by some of the states is arbitrary low and is not in keeping with the object of the legislation. Therefore, it was held that it is the duty of the courts, on taking cognizance of criminal offence to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the court ought to direct grant of interim compensation subject to final compensation being determined later. It was further pointed out that gravity of offence and need of victim are some of the guiding factors to be kept in mind apart from such other factors as may be found relevant

⁶ 2015 AIR SC 518

in the facts and circumstances of the individual case. The Division Bench of this court in this case **Safiar Rahaman @ Sk. Sufiar Rahaman Versus State of West Bengal** ⁷, after considering The West Bengal Victim Compensation Scheme, 2012 held that the maximum compensation fixed at Rs. 2,00,000/- for loss of life is insufficient and directed the amount of Rs. 2,00,000/- to be paid as interim compensation with the further direction to the District Legal Services Authority to adjudicate the final compensation based on the formula contemplated under the Motor Vehicles Act, 1988. In **Rohtash Kumar Versus State of Haryana** ⁸, the Hon'ble Supreme Court considered the plight of the person who lost his son in a fake encounter though a prayer was made for conducting fresh investigation, the Hon'ble Supreme Court noted the decision in **Nilabati** and held that custodial death is a clear violation of the prisoner's right under Article 21 of the Constitution and granted compensation to the said appellant.

7. The law on the subject as culled out from the above decision was rightly applied by the learned Single Bench while allowing the writ petition and directing compensation to be paid. The amount of Rs. 3,00,000/- which was ordered to be paid had been paid to the writ petitioner only on 31.03.2016, to be noted that the writ petitioner's son was done to death on 03.09.2003. The victim was aged about 35 years and was carrying on business as a scrap dealer and the writ petitioner had contended that he was earning a sum of Rs. 9000/- per month. This fact has not been controverted by the respondents as no affidavit in opposition was filed in the writ petition nor

⁷ 2015 (4) CHN (Cal) 151

⁸ 2013 (14) SCC 290

extension of time for filing such affidavit was sought for. Even during the pendency of this appeal nothing has been placed on record by the respondent to establish that the plea of the writ petitioner that her son who was a bachelor had been earning around Rs. 9000/- per month from his business. The passage of time from the date of the murder of the writ petitioner's son till the actual day of which the compensation amount of Rs. 3,00,000/- was paid to her is a factor which has to be reckoned. It has taken 13 years for the writ petitioner to be compensated for the brutal murder of her son by a police personnel. The criminal case initiated against the perpetrator has ended in conviction with life imprisonment and he is in prison. The state has not converted any of the contraventions raised by the writ petitioner. Therefore, the long delay in disbursement of compensation is a factor which should be given due regard and much emphasize to enable this court to consider as to whether further compensation has to be ordered or not. More importantly, the respondents on their own violation did not pay the compensation but it is only pursuant to the directions issued in the writ petition such compensation appears to have been paid to the writ petitioner. Thus, the conduct of the respondents is also a factor to be reckoned while determining the quantum of compensation. While assessing the compensation the courts have held that the methodology prescribed under the provisions of the Motor Vehicles Act to very well be adopted. Broadly the factors which would be relevant are the age of the victim, his education qualification his monthly earnings the number of dependents and to what extent the family of the victim had been jeopardized on account of the sudden loss of the victim who may be the sole bread winner of the family.

Thus, considering all the above factors, we are of the view that the writ petitioner was entitled to compensation much more than Rs. 3,00,000/-. It may be argued by the respondents that as of now the writ petitioner is no more as she died on 16.10.2020. The legal heirs of the deceased writ petitioner were her three sons one of whom also died on 17.05.2022 leaving behind two sons to pursue the present appeal. In any event, the anguish suffered by the mother of the victim can never be expressed in monetary scales. The agony she would have suffered on the loss of her child that to on account of brutal attack by police personnel using firearm. That apart, the mental and physical suffering which the writ petitioner would have undergone when the trial was in progress is also a fact to be noted. The writ petitioner and her family namely the present appellants were driven from to pillar to post virtually with a begging bowl praying for compensation. The Executive Magistrate's report which has been referred to by the learned Single Bench clearly shows that the writ petitioner's son was done to death by police personnel using a firearm and there was absolutely no justification to use the firearm and the same was held to be brutal and excessive. In such fact situation, the court is required to take a holistic view in the matter regardless of the fact that the appellant is no more though she had been vindicating her right and zealously prosecuting the matter before the authorities and having not been granted any relief by the authorities was compelled to approach this Court by filing the writ petition in the year 2009.

8. Award of compensation in proceedings under Article 226 of the Constitution is a remedy available in public law. In the instant case, the

violation of the fundamental right has been indisputably established and the respondents can never plead any sovereign immunity. As held by the Hon'ble Supreme Court in **D.K. Basu**, it is the duty of the court to satisfy the social aspirations of citizens because courts and their law are for the people and expected to respond to their aspirations, the court of law cannot close its consciousness and aliveness to stark realities. The undisputed facts before us thus convinces us to enhance the compensation which was paid to the writ petitioner for the brutal murder committed on her son on the fateful night of 03.09.2003. As pointed out earlier, the earnings of the victim has not been disputed by the respondents and by applying a conservative formula and also the fact that the victim was a bachelor the compensation should be adequate and reasonable and not excessive and fanciful.

9. In the result, the appeal is allowed and the amount of additional compensation that shall be paid to the appellants is fixed at Rs. 5,00,000/-. We make it clear that this amount of Rs. 5,00,000/- shall be paid to the appellants which shall be in addition to the amount of Rs. 3,00,000/- already paid to the writ petitioner pursuant to the directions issued by the learned Single Bench. The above direction shall be complied with by the respondents within a period of 60 days from the date of receipt of the server copy of this judgment.

(T.S. SIVAGNANAM, J)

I agree

(HIRANMAY BHATTACHARYYA, J)