

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.76 of 2017

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment dated 02.12.2016 passed by the learned District Judge, Bargarh in R.F.A. No.49 of 2014 confirming the judgment and decree dated 24.04.2014 and 08.08.2014 respectively passed by the learned Senior Civil Judge, Bargarh in Civil Suit No.54 of 2005.

Physically Handicapped School, Appellant
Bargarh, represented through
President of its Managing
Committee

-versus-

Ushadevi Sharma Respondent

Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):

<i>For Appellant</i>	-	Mr.S.P. Mohanty (Advocate)
<i>For Respondent</i>	-	Miss.Samapika Mishra (Advocate)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 22.09.2022 : Date of Judgment:26.09.2022

D.Dash,J. The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment dated 02.12.2016 passed by the learned District Judge, Bargarh in R.F.A. No.49 of 2014.

By the same, the Appeal filed by the present Appellant, being the aggrieved Defendant No.1 in Civil Suit No.54 of 2005 of the Court of the learned Senior Civil Judge, Bargarh under section 96 of the Code, has been dismissed and the suit filed by the Respondent No.1, as the

Plaintiff, has been decreed in part. The Plaintiff having been granted with a decree of compensation of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) by the Trial Court, the same has been confirmed in the First Appeal.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. The Plaintiff's case is that his son Sailesh Sharma was a blind and was pursuing his studies in the Physically Handicapped School, Bargarh which in the suit represented through the President of the Managing Committee as a boarding student. It is stated that on 04.02.2005 around 9.00 PM, a teacher of the school informed the husband of the Plaintiff regarding the fact that their son Sailesh has sustained injuries on receiving a fall in the toilet and has been admitted in the Government Hospital, Bargarh. The Plaintiff and her husband rushed to the Hospital and found foams coming out of the mouth of Sailesh and saline was then being administered to Sailesh. However, they did not notice any injury on the body of Sailesh. The treating physicians referred Sailesh to V.S.S. Medical College and Hospital, Burla for better treatment. Sailesh being shifted to the Medical College and Hospital in an ambulance, he breathed his last on the way. The Plaintiff, suspecting foul play when insisted for post mortem examination over the dead body of his son, the Principal and other authorities of the school then interfered and persuaded them not to go for the same and finally, on 05.02.2005 morning, the dead body was cremated. The Plaintiff raised suspicion when on the next date, i.e., 05.02.2005, they found a news clipping in Odia Daily, "Sambad" that the Principal of the School (Defendant No.2)

had given statement to the effect that Sailesh was suffering from Malaria. The Plaintiff then came to know that such sufferings of Sailesh was not disclosed to them. It is stated that with hope that the child would be properly taken care of by the school authority, the Plaintiff having admitted Sailesh in the school, the Defendants did not bother to take appropriate health care and other required measures and for their negligence, his death has taken place. Then they also came to know that prior to the incident, four students had died unnatural death under suspicious circumstances while studying in the said school. So, they lodged FIR at the concerned Police Station. In view of all these, attributing negligence of the Authorities and Management of the Defendant No.2-School in the matter of death of Sailesh, the suit claiming compensation Rs.10,00,000/- came to be filed.

4. The Defendants, in the written station, have refuted the claim of the Plaintiff. It is stated that Sailesh was studying in Class-1 for last nine years and had gone to his parental house where he stayed for a period of three months and thereby on 02.02.2005, had been in an ailing condition in the school. Then on being asked, the father of Sailesh had informed the Authority about the various ailments of Sailesh. The Superintendent of the School when refused to accept Sailesh in the school in that ailing condition, it is stated that the father of Sailesh left him there and went away. It is next stated that two days after the same, on 04.02.2005, Sailesh had a fall in the toilet and was shifted to hospital. The parents of Sailesh arrived at the hospital and narrated all to symptoms to the Doctor. Accordingly, initial treatment was given and thereafter the death has taken place. It is stated that there was no negligence on the part of the school authorities in the matter.

5. On the above rival pleadings, the Trial Court, in total, has framed six even issues. Having answered the crucial issues, upon examination of the evidence and their evaluation, the Trial Court has held that for the negligence of the school authorities, Sailesh has died. The other issue as to the assessment of compensation has been taken up and finally, it has been directed that the Defendant is liable to pay a sum of Rs.1,50,000/- (rupees one lakh fifty thousand) to the Plaintiff.

The Defendants, being aggrieved by the said judgment and decree passed by the Trial Court, having carried the First Appeal, has been unsuccessful. Hence, the present second Appeal.

6. The present Appeal has been admitted to answer the substantial question of law:-

“Whether the courts below have erred in law by directing the appellant to pay compensation on principle of “*RES IPSA LOQUITUR*” in absence of direct evidence of negligence on the part of the appellant?”

7. Learned counsel for the Appellant submitted that the circumstances appearing in the evidence do not justify the application of the principle of “*RES IPSA LOQUITUR*” in holding that the authorities in charge of the school while are negligent while keeping that Sailesh in the school for which his death has take place. He further submitted that merely because that Sailesh, at the relevant time, was there in the school as a boarding student and had been shifted to the hospital for his ailment for being given the treatment whereafter he died, the Courts below ought not to have fastened the liability of payment of compensation upon Defendant No.1.

8. Learned counsel for the Respondent, on the other hand, supported the findings of the Courts below. Inviting the attention of the Court to

the pleadings as well as the evidence on record, she submitted that both the Courts below having taken great pain in analyzing the evidence on record, have rightly held the Defendant No.1 liable to pay the compensation holding that for their negligence, the death of Sailesh has taken place.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

10. Admitted position stands that Sailesh, at the relevant date, was there in the school. He being a blind male child, was prosecuting his studies in the school, i.e., Physically Handicapped School, Bargarh as a boarding student. The death of Sailesh has taken place while he was being shifted to V.S.S. Medical College and Hospital, Burla from the District Headquarter Hospital, Bargarh on being referred by the Medical officer, who had treated him at the first instance. The Doctor (P.W.2), having been examined in the case, has stated that he had suspected that Sailesh was suffering from cerebral malaria. As per the case of the Defendant No.1, Sailesh was taken to the school on 02.02.2005 when his father had left him there. The Defendant No.1 when states that they had the knowledge about the prior illness of that Sailesh, it is not said that they, before taking that Sailesh in the school, had taken the care of getting him medically examined in ascertaining his state of health for being fit to be kept as a boarding student there in the school with other students and at the same breath, it is not said that the father of Sailesh had made any suppression about the illness of Sailesh. This clearly reveals that the school where physically handicapped children used to reside as a boarding student and prosecute their studies, the authority who are supposed to take utmost care in keeping their health in sound

condition and relation to their treatment, this inaction at the time of taking Sailesh to the school on his return on 02.02.2005 speaks volume on their negligent act. Had that been taken care of by taking the child for the immediate treatment of the continuing illness, if any, the situation could have been avoided. The authority of the school thus has failed in discharging their absolute duty in the matter. Furthermore, when they were aware of this fact, it is not said that constant watch was kept over the boy as regards his movement as also the health condition even by once getting him examined by a medical professional. Thus, even accepting the case of the Defendant No.1, when it is found that there has been failure on the part of the authority of the school to ensure timely medical treatment of Sailesh on receiving him from his father and before keeping him in the school with other boarders without obtaining a certificate as to good health condition from the medical professional, the Courts below are found to have committed no mistake in applying the principles of “*RES IPSA LOQUITUR*” in holding that the Defendant No.1 is liable to pay the compensation on account of the death of the deceased (Sailesh) taking place under the given circumstances.

The answer to the substantial question of law being accordingly returned, the Appeal is liable to be dismissed.

11. In the result, the Appeal stands dismissed. There shall, however, be no order as to cost.

**(D. Dash),
Judge.**

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