

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.10911 of 2021
(Through hybrid mode)**

Gokul Mallik

....

Petitioner

Mr. Bijay Kumar Nayak, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. A. K. Sharma, Advocate
(Additional Government Advocate)

Mr. P.K. Parhi, ASGI
Mr. K. Ch. Jena, CGC
for O.P.5

CORAM: JUSTICE ARINDAM SINHA

**ORDER
05.08.2022**

Order No.

- 05.** 1. Mr. Nayak, learned advocate appears on behalf of petitioner. He had moved the petition on 6th December, 2021 to submit, son of his client died by accident. The deceased was working in an 'Off' shop, when there was high wind. The roof fell down and caused head injury. Owner of the shop took the injured to hospital but he expired two days later. Today he submits, his client is entitled to ex-gratia but has been denied. He draws attention to page 21 in the writ petition, being enclosure to order dated 1st June, 2015 issued by Government of Odisha Revenue and Disaster Management Department (Special Relief), entry no.9. He submits, cause of death stands covered by said entry and compensation payable is Rs.4,00,000/-(Rupees

four lakhs only).

2. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State. He draws attention to annexure-B/4 in the counter. Relying thereon he submits, the report says, petitioner had admitted that on 24th May, 2017, while his son was working in the shop, all of a sudden a tin sheet of the liquor shop roof fell down on his head, which caused serious head injury, leading to his death. The report also says eye witness Sri Sibaji Sahoo owner of the shop, admitted that the whole incident was accidental and not out of natural catastrophe or disaster. Paragraph 6 from the report is reproduced below.

“More over the rain fall report of Nayagarh District specifically of Daspalla on 24.04.2017 which was generated through Odisha Rainfall Monitoring System was found as 0 m.m.”

3. The police filed final report dated 14th March, 2018 regarding investigation into cause of death. It appears from the report, Khandagir P.S. Case no.99 dated 25th May, 2017 stood registered on information given by one Gouranga Mallick. The accident happened on 22nd May, 2017. The victim was shifted to hospital, where he died on 24th May, 2017. Information to the police was given after the death, on 25th May, 2017, i.e., on the 3rd day from the date of accident. Information given on the 3rd day from date of accident was that on 22nd May, 2017, a cyclonic storm took place in their area, which caused to fall down the house asbestos sheet,

which hit victim on the head and he got serious injury. The police personnel filing the final report said he examined informant and other available witnesses, recorded their statements under section 161, Code of Criminal Procedure and visited the spot to hold inquest.

4. State relies on enquiry report dated 7th March, 2020 of the Tahasildar, made pursuant to order obtained by petitioner in his earlier writ petition W.P.(C) No.2903 of 2020. The report mentions that petitioner was not at the spot. The report further says that owner of the shop was eye witness. A passage from the report is extracted and reproduced below.

“The witness has stated that on 24.05.2017, all of a sudden a tin sheet of his liquor shop fall down on the head of Padma Charana causing serious head injury. Soon after the witness Sri Sibaji Sahoo took the deceased Padma Charana to the nearest Area Hospital Daspalla & after his primary treatment by taking into the gravity of injury he shifted to the deceased to SUM HOSPITAL BHUBANESWAR. He had taken utmost care for the treatment of the deceased at SUM HOSPITAL, BHUBANESWAR. The witness has admitted the fact that inspite of all sort of effort by the doctors the deceased Padma Charana unfortunately got died on 25.05.2017. There after post mortem had been carried out at Capital Hospital Unit-6, Bhubaneswar. After the Post Mortem the dead body was handed over the deceased family. After the demise of Padma Charana Sri Sibaji Sahoo owner of the liquor shop had give around 80,000/- (Eighty thousand rupees) to the deceased family on compassionate ground. The eye witness Sri Sibaji Sahoo more over admitted the fact that the whole incident was an accidental

one & not out of natural catastrophe or disaster.”

(Emphasis supplied)

5. As aforesaid Tahasildar made the report on 7th March, 2020, almost three years after the accident. Above extract of eyewitness statement made before the Tahasildar does not say anything about cyclone. This is in contrast to information given to the P.S. three days after happening of the event. The presumption is, no question was put by the Tahasildar to the eyewitness on whether or not there was cyclone/storm/wind activity that caused the accident, by a part of the roof falling on the victim's head.

6. In above circumstances, Court is inclined to rely on the First Information Report, rather than the report that came almost three years after the incident. More so because, pursuant to the First Information Report, the police caused investigation and found there was nothing, as appears from the final report, to impeach any part of the First Information Report. It is clear that the police, in closing the case of investigation into the unnatural death, did not find any foul play. It is implied that cause for the asbestos sheet in the roof being dislodged was cyclonic storm.

7. Entry no.9 in scale of ex-gratia assistance notified by said order dated 1st June, 2015 includes lightning, heat wave, whirl wind, tornado and heavy rain, amongst other particulars of calamity. Court accepts there was no rain on that date in the location but, that does not rule out wind activity. It is gainsaid that strong wind activity without rainfall can be perceived by locals

to be cyclonic storm.

8. State will pay compensation at Rs.4,00,000/- (Rupees four lakhs only) to petitioner within four weeks of communication, failing which the compensation will carry interest at 5% simple per annum from 19th March, 2021 (date of presenting the writ petition), till payment.

9. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant

