

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.18942 of 2016

(Through Hybrid mode)

Bobby Karmakar and others

....

Petitioners

Mr. B. Barik, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

Ms. Suman Pattanayak, Addl. Govt. Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER

25.08.2022

Order No.

10. 1. Mr. Barik, learned advocate appears on behalf of petitioners, who are widow, son and daughter of the person taken into custody and died. He submits, there is medical treatment report dated 7th October, 2016 signed by Jail Medical Officer saying, the accused was admitted to jail hospital on 18th August, 2016 for treatment of alcohol withdrawal syndrome and he died therein on 22nd August, 2016. Post-mortem report disclosed in the counter says, inter alia, there was evidence of physical injury but non-fatal. He submits, facts in the case are similar to and therefore, his clients claim for compensation as covered by **order dated 22nd July, 2022** passed by this Bench in **WP(C) no.41921 of 2021 (Rajendra Behera v. State of Odisha and others)**.
2. Ms. Pattanayak, learned advocate, Additional Government Advocate appears on behalf of State and submits,

additional affidavit to the counter has been filed. Petitioner no.1 had lodged complaint dated 10th August, 2016 with local police station, of mental and physical torture meted out by her deceased husband. She said, when she opposed him taking liquor, he used to beat her. She had requested necessary steps taken so that her husband should get proper punishment. On basis of the complaint, the deceased was arrested on 17th August, 2022 and thereafter, admitted in the jail hospital for treatment on alcohol withdrawal.

3. She relies on the post-mortem and viscera reports to submit, opinion as to cause of death is result of acute respiratory distress syndrome, a known complication of chronic alcohol consumption. She also refers to the post-mortem report to point out therefrom, information given are also that the deceased may have suffered from fits, leading to the non-fatal physical injuries. As such, State took reasonable care of health and safety of the accused person. Magisterial inquiry was also conducted. The unfortunate incident of death could not be prevented.

4. In **Rajendra Behera** (supra) facts were that the Under Trial Prisoner (UTP) had died in the jail, by hanging. State had not alleged suicide. The body bore evidence of injury at the back caused on some physical violence, though the injury was non-fatal. In those facts there was presumption of negligence on part of the jail authorities in maintaining peaceful environment in the jail. In this case, there is no doubt that the deceased was an alcoholic. Soon after arrest, in fact on the next day, he was sent to the hospital. The physical non-

fatal injuries detected in the post-mortem does indicate that the deceased suffered from fits on not having had access to alcohol. The viscera report carries opinion of the expert that the deceased could have died as a result of acute respiratory distress syndrome, a known complication of chronic alcohol consumption.

5. **Rajendra Behera** (supra) is not applicable to this case. In the facts and circumstances there cannot be inference of negligence on part of the State for a direction being made for compensation.

6. The writ petition is dismissed.

(Arindam Sinha)
Judge

RKS

