

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.11695 of 2020 (O&M)
Date of Decision: 28.04.2022**

Ram Lal and others

.....Petitioners

Vs

State of Punjab and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Chandan Singh, Advocate and
Mr. Divij Dutt, Advocate
for the petitioner.

Ms. Akanksha, Asstt. A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this writ petition for the issuance of an appropriate writ in the nature of mandamus, directing the respondents to pay compensation of Rs.2 crores to the petitioners for the custodial death of Mohinder Pal @ Bittu in New District Jail, Nabha, District Patiala on 22.06.2019.

[2]. Deceased Mohinder Pal @ Bittu was confined in New District Jail, Nabha in FIR No.89 dated 13.06.2018 registered under Section 295-A IPC at P.S. City Kotkapura, District Faridkot. Petitioner No.1 is father of the deceased. Petitioner

No.2 is widow and petitioners No.3 and 4 are the sons of the deceased.

[3]. Deceased Mohinder Pal @ Bittu was in judicial custody in the aforesaid Jail. On 22.06.2019, as per prosecution case, the private respondents committed murder of Mohinder Pal @ Bittu in the jail premises. Initially, two persons namely Mohinder Singh @ Jumma and Gursewak Singh @ Bhoot were named in the FIR No.101 dated 22.06.2019 under Sections 302/34/120-B IPC in P.S. Sadar Nabha, District Patiala. Thereafter two other accused namely Jaspreet Singh and Lakhbir Singh were nominated during course of investigation. Consequently, challan was presented against four accused persons and they are facing trial.

[4]. The cause of death of Mohinder Pal @ Bittu was found to be head injury leading to shock which was ante-mortem in nature. Viscera of the deceased was also sent for chemical examination in order to rule out any kind of possibility of intoxication.

[5]. As per reply filed by way of affidavit of Manjit Singh Tiwana, PPS Superintendent, New District Jail, Naha on behalf of respondents No.1 to 3, the deceased Mohinder Pal @ Bittu was also involved in other cases bearing FIR No.33 dated 07.03.2011 registered under Sections 283/353/186/427/323/

436/148/149 IPC & Public Property Act, Police Station City-1 Moga, FIR No.93 dated 30.08.2017 registered under Sections 435/436/448/451/148/149/120-B IPC & 3/4 of the Public Property Act at Police Station City Fazilka and R.C. No.13(S) of 2015/CBI/SC-III/New Delhi registered under Sections 295-A/380 IPC at Police Station CBI, SC-III, Delhi. Deceased was under trial along with his co-accused and was kept in special separate block in jail premises. His block was segregated from other common prisoners. Jail Authorities regularly visited them. On 22.06.2019, in the evening, Mohinder Pal @ Bittu and his accomplice inmate Rajveer Singh came out of their block without permission. They were accompanied by PESCO employee posted for security at the block. The Jail employee posted at the gate of the ward sent them back as they could not have been sent out of the block without permission of the senior officers. When PESCO employee was taking both the prisoners back to their block and when they entered the common passage outside the special block where other prisoners were also present, convict Gursewak Singh @ Bhoot and Maninder Singh @ Jumma attacked both the prisoners, during which the accused Mohinder Pal @ Bittu sustained head injuries. Jail employees with the help of other prisoners apprehended the assailants and rescued the other inmate Rajveer Singh. The then injured Mohinder Pal @ Bittu and inmate Rajveer Singh

were sent to Jail Hospital and thereafter the then injured Mohinder Pal @ Bittu was referred to Civil Hospital, Nabha by the Jail Medical Officer. Mohinder Pal @ Bittu was declared dead at the Civil Hospital, Nabha.

[6]. According to the stand taken by respondents No.1 to 3, adequate security measures were taken in the jail premises. The deceased was kept in an isolated block from other inmates and jail officers were visiting them regularly. The inmates were told not to leave their block without prior permission of the jail officials. FIR No.101 was registered on 22.06.2019 under Sections 302, 34, 120-B IPC at P.S. Sadar Nabha against inmates Gursewak Singh @ Bhoot, Maninder Singh @ Jumma and thereafter other prisoners namely Jaspreet Singh @ Nihal Baba, Lakvir Singh @ Lakha Baba and Harpreet Singh @ Bana were also involved in the said FIR.

[7]. After the occurrence, preliminary inquiry was conducted by Superintendent, New District Jail, Nabha vide order dated 22.06.2019 and after considering the inquiry, officials were found guilty of negligence towards their duties and they were suspended. Lal Singh PESCO Guard was dismissed from service. Further inquiry was also conducted by DIG, Jails-cum-Superintendent Headquarter Jail, Patiala. In the inquiry report, it came into light that Head Warder Ajmer Singh 139 (Asstt.

Supdt., O.P.S), who was in-charge of the Ward where deceased was kept and Warder Major Singh 725 had not discharged their duties diligently, therefore, Head Warder Ajmer Singh and Warder Major Singh were chargesheeted under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 for negligence in discharge of their duties. Head Warder Ajmer Singh 139 (Asstt. Supdt. O.P.S) was punished under Rule 8 of the aforesaid Rules of 1970 by awarding punishment of withholding of two annual increments of pay without any cumulative effect vide order dated 07.09.2020. Warder Major Singh was punished under Rule 8 of the aforesaid Rules by withholding of three annual increments of pay with cumulative effect vide order dated 07.09.2020.

[8]. The case regarding award of adequate compensation was initiated by the respondents on 03.06.2020 and was sent to the office of Addl. Director General of Police (Prisons), Punjab, Chandigarh. As per the stand taken by the respondents, the Government issued a policy dated 04.02.2013 for awarding compensation to the legal heirs of the deceased convicts. As per the Policy, the Government of Punjab vide letter dated 13.02.2021 has approved an amount of Rs.1 lakh as compensation for the legal heirs of the deceased Mohinder Pal @ Bittu.

[9]. Learned Senior counsel for the petitioners submitted that custodial death of Mohinder Pal @ Bittu is not in dispute and the State has paid only an amount of Rs.1 lakh as per policy of the State. Murder of Mohinder Pal @ Bittu took place on account of negligence and carelessness on the part of the jail authorities. The deceased was earning member of the family. Learned Senior counsel by referring to **Dy. Commr. Dharwad, Dist. Dharwad & Ors. vs. Shivakka & Ors., 2012(2) R.C.R. (Criminal) 452; CWP No.4273 of 2003** titled '**Harcharan Singh vs. State of Punjab and others**' decided on 24.04.2014 and **CWP No.4222 of 2015** titled '**Mohinder Singh and another vs. State of Punjab and ors.**', decided on 03.05.2019 further submitted that compensation has to be granted to the legal heirs/dependants of the deceased, who died in custody. In the aforesaid cited precedents, the Courts have considered the grant of compensation under the writ jurisdiction.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. It is a settled principle of law that the Court can grant appropriate relief in case of deprivation of constitutional guarantee of life and personal liberty. A claim in public law of compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in

the Constitution, is an acknowledged remedy for enforcement and protection of such rights. Though such claims are based on strict liability, by resorting to constitutional remedy provided for enforcement of fundamental rights which is distinct from, and also in addition to, the remedy in private law for damages i.e. torts resulting from contravention of the fundamental right.

[12]. In **Phoolwati vs. State (Union Territory of Chandigarh) and others, 2008(1) R.C.R. (Criminal) 167**, while deciding such cases, the parameters as laid down in motor accident claim cases can be relied. The multiplier as provided in Motor Vehicle Act, 1988 can be applied to the cases of custodial death as well. In order to calculate the compensation to be awarded to the dependants of the deceased, the parameters as laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77 (SC)** and **National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) R.C.R. (Civil) 1009 (SC)** can be relied.

[13]. The annual income of the deceased as per income tax returns (Annexures P-2, P-3 and P-4) has been relied upon by learned Senior counsel for the petitioners. According to the aforesaid documents, annual income of the deceased is *prima facie* proved to be Rs.3,52,588/-.

[14]. As per legal position, future prospects @ 25% are to be considered while assessing the compensation. The amount of Rs.88,147/- has to be assessed towards future prospects of the deceased. In this manner, total annual income comes out to be Rs.4,40,735/-. Out of the aforesaid amount, deduction towards personal expenses to the tune of 1/4th has to be applied. In this way an amount of Rs.1,10,184/- has to be deducted from Rs.4,40,735/- and the annual loss of dependency would come out to be Rs.3,30,551/-. Since the deceased Mohinder Pal @ Bittu was aged about 49 years at the time of the occurrence, therefore, as per ratio of **Sarla Verma and others's** case (supra) on the basis of age of the deceased, multiplier of 13 can be applied to the aforesaid annual loss of dependency and the amount comes out to be Rs.42,97,163/-.

[15]. In view of ratio of **National Insurance Company Limited vs. Pranay Sethi and others's** case (supra) an additional amount of Rs.70,000/- has to be assessed under the conventional heads i.e. funeral expenses, loss of estate and consortium is to be considered. In this way the total amount of compensation comes out to be Rs.43,67,163/- (42,97,163/- + 70,000/-).

[16]. As per parameters laid down while granting compensation under the Motor Vehicles Act, negligence on the

part of the deceased is also one of the factors which would entitle the respondents to apply cut towards certain percentage in the entitlement of the claimants. As per the facts emerging from the stand of the respondents which are outcome of the inquiries, the deceased along with other inmate Rajveer Singh accompanied by PESCO guard came out of their block without permission. The jail employee posted at the gate of the ward sent them back by saying they could not have been sent out of the block without permission of the senior officers. It was at that juncture, they were attacked when they were returning.

[17]. In view of aforesaid contributory negligence on the part of the deceased Mohinder Pal @ Bittu to the extent of making effort to come out of the block without permission can be appreciated. The jail employees, who were at fault have been punished by the competent authority by stopping their annual increments with or without cumulative effect. Since the compensation matters are to be adjudged with some instinct of guess work, therefore, contributory negligence to the extent of 50% can be attributed to the deceased while attempting to come out of the block without seeking permission. The amount of compensation as assessed above, is liable to be slashed down by 50%. Accordingly, an amount of Rs.21,83,581/- is assessed as compensation. Since an amount of Rs.1,00,000/- has already

been paid as per policy framed by the State, therefore, the said amount is liable to be deducted from the aforesaid computation.

In this way, the petitioners are entitled to the compensation to the tune of Rs.20,83,581/- (21,83,581/- – 1,00,000/-).

[18]. Let the aforesaid assessed amount of compensation be paid to the petitioners within a period of three months from today, failing which the claimants/petitioners shall be entitled to interest @ 6% per annum from the date of expiry of three months till actual realization of the amount.

[19]. In view of aforesaid, this writ petition stands disposed of.

April 28, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No