

26-06-2023
ct no. 13
sl. 47
sp

WPA 4508 of 2023
Balabinder Kaur
-Versus-

State of West Bengal & Ors.

Mr. Manjit Singh,
Mr. Abhishek Bagal

...for the petitioner

Mr. T.M. Siddiqui

...for the State

Mr. Jayanta Narayan Chatterjee,
Ms. Moumita Pandit,
Mr. Supreem Naskar,
Ms. Jayashree Partra,
Ms. Ritushree Banerjee

...for the SLSA

1. The only question that comes for consideration and decision now after receiving affidavit is the quantum of compensation payable to the family of the victim. The petitioner is the wife of the deceased under trial prisoner who died in custody. An FIR has been registered pursuant to orders of this Court. The investigation has now been conducted by the CID, West Bengal.
2. Mr. Manjit Singh, learned counsel appearing for the petitioner submits that his client has received a sum of Rs. 2 lakhs as compensation from the State Legal Services Authority. Mr. Singh would rely upon several judgements of various High Courts and Supreme Court in

support of his contention and argue that the compensation payable to the petitioner on account of unfortunate death of her husband, in custody, should not only be decided by the Writ Court but the quantum should be decided keeping in view the principles behind the award of compensation under the Motor Vehicles Act, 1985.

3. In support of the first proposition that the Writ Court under Article 226 and 32A of Constitution of India should not hesitate to direct compensation to be paid and the victims and their families should not be driven to Civil Courts, reliance is placed in the case of **Rudul Sah Vs. State of Bihar and another** reported in **(1983) 4 SCC 141**, particularly, paragraph 9 and 10.

Para 9: It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts. Civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release

from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

Para 10: We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in this favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of money compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to

educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

In the said decision, the Hon'ble Supreme Court was concerned with the case of wrongful detention of the petitioner. Compensation was awarded for rehabilitation, reimbursement of expenses for medical treatment and compensation for illegal incarceration was ordered in the said case.

4. The next decision relied upon is the case of ***Nilabati Behera (Smt.) alias Lalita Behera (through the Supreme Court Legal Aid Committee) Vs. State of Orissa and others*** reported in **(1993) 2 SCC 746**, particularly paragraph nos. 17 to 22. The power of Court to award compensation under Article 226 and 32 of the Constitution of India was discussed and reiterated. The earlier decision of Rudul Sah Vs. State of Bihar and another (supra) has also been discussed.

17. *It follows that 'a claim in public law for 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, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is*

'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. *A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.*

19. *This view finds support from the decisions of this Court in the Bhagalpur Blinding cases : Khatri (II) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228] and Khatri (IV) v. State of Bihar [(1981) 2 SCC 493 : 1981 SCC (Cri) 503] wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared "to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of*

the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corpn. v. Union of India [(1991) 4 SCC 584] Misra, CJ. stated that “we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future ... there is no reason why we should hesitate to evolve such principle of liability ...”. To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case [(1991) 4 SCC 584] with regard to the court's power to grant relief.

20. *We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when*

invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

21. *We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:*

“Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

22. *The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line have to be understood and Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.*

5. In **Chairman, Railway Board and others Vs. Chandrima Das (Mrs.) and others** reported in **(2000) 2 SCC 465**, particularly paragraph nos. 10, 11, 30 and 42. In the said decision, the

Hon'ble Supreme Court was considering the challenge to a decision of this Court, where compensation was awarded to a rape victim by the High Court. Upholding the decision of the High Court, the Supreme Court has stated as follows:-

Para 10: In cases relating to custodial deaths and those relating to medical negligence, this Court awarded compensation under the public law domain in

Para 11: Having regard to what has been stated above, the contention that Smt. Hanuffa Khatoon should have approached the civil court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law.

6. Recently a Division Bench of this Court in a Public Interest Litigation being WPA (P) 9 of 2020 (Arijit Adhikary Vs. State of West Bengal & Ors.) was dealing with a case of death of a teenage boy. In the said case, the Division Bench had the benefit of a report and recommendation of the National Human Rights Commission of compensation assessed at Rs. 6 lakhs that was payable to the family of the victim. The Division Bench, however, increased his quantum from

Rs. 6 lakhs to Rs. 15 lakhs taking note of various victims.

7. It follows from the above that the High Court under Article 226 of the Constitution of India is not only empowered to award compensation to victim of custodial death in particular, and in general, upon failure of the State to not only reign in and control its facilities, but also for all actions including negligence which result in severe consequences to a citizen. The compensation is meant for not only rehabilitation and/or treatment of the victim but is also aimed at compensating and providing some relief to the family when a sole earning member dies as a consequence of any acts or omissions on the part of the State.
8. On the quantum of compensation, this Court is of the view that there has to be an appropriate assessment of the same. The quantum cannot depend on any emotion or be subjective. It is, therefore, necessary for some formula or standard to be set for being followed for the purpose of determining the quantum of compensation payable to the victims and/or their families who have suffered consequence of acts and omissions.

9. In this regard the Madras High Court in the case of **Lakshmana Naidu (decd) Vs. State of Tamil Nadu and another** reported in **2006 WLR 608** at paragraph nos. 13 and 14 held as follows:-

*Para 13: The Honourable Supreme Court of India in the decision rendered in **Malkiat Singh v. State of U.P.**, 1998 (9) SCC 351, awarded a compensation of Rs. 5 lakhs to the father of the person who was killed in an alleged encounter with police. In the case of **R. Dhanalakshmi v. Government of Tamil Nadu**, 2004 WLR 346, the learned single Judge of this Court fixed a compensation of Rs. 9 lakhs in respect of the custodial death taking note of age, income of the deceased, family circumstances and dependency, etc, by applying the multiplier as provided under the Motor Vehicles Act. This Court is of the view that the same principle adopted in **R. Dhanalakshmi v. Government of Tamil Nadu**, 2004 WLR 346 can be adopted to fix the compensation that is payable to the petitioners in the above Writ Petitions.*

Para 14: (i) In WP No.1602 of 1999, the age of the deceased Bale @ Subramaniam was 25 years at the time of death; his income per day was Rs.60; the loss of income per year will be Rs.21,600 and if the standard 1/3-rd deduction is made, the loss of income will be Rs.14,400, if the age of the deceased i.e. 25 years is taken into account, as per the provisions of the Motor Vehicles Act, the multiplier to be adopted will be 18 and the compensation that could be arrived at is Rs.2,59,200; towards loss of love and affection a sum of Rs.25,000 could be easily awarded and towards mental agony and suffering of the petitioners a sum of Rs.25,000/- could be fixed; the death was caused on 29.10.1990 if interest at 9% is awarded on the compensation amount on the sum of Rs.3,09,200 up-to-date, it will come to approximately Rs.7,26,620.

(ii) In WP No.1603 of 1999, the age of the deceased Rajamanickam was 31 years at the time of death; his income per day was Rs.60; the loss of income per year will be Rs.21,600 and if the standard 1/3-rd deduction is made the loss of income will be Rs.14,400, if the age of the deceased i.e., 31 years is taken into account, as per the provisions of the Motor Vehicles Act, the multiplier to be adopted will be 17 and the compensation that could be arrived at is Rs.2,44,800; towards loss of love and affection a sum of Rs.25,000 could be easily awarded and towards mental agony and suffering of the petitioners a sum of Rs.25,000 could be fixed; the death was caused on 29.10.1990, if interest at 9% is awarded on the compensation amount on the sum of Rs.2,94,800 up-to-date, it will come to approximately Rs.7,06,046.

(iii) In WP No.1604 of 1999, the age of the deceased Jayaraman was 27 years at the time of death' his income per day was Rs.60; the loss of income per year will be Rs.21,600 and if the standard 1/3-rd deduction is made the loss of income will be Rs.14,400, if the age of the deceased i.e. 27 years is taken into account, as per the provisions of the Motor Vehicles Act, the multiplier to be adopted will be 18 and the compensation that could be arrived at is Rs.2,59,200/-; towards loss of love and affection a sum of Rs.25,000/- could be easily awarded and towards mental agony and suffering of the petitioners a sum of Rs.25,000 could be fixed; the death was caused on 29.10.1990, if interest at 9% is awarded on the compensation amount on the sum of Rs.3,09,200 up-to-date, it will come to approximately Rs.7,26,620.

10. Referring to various decisions of the Supreme Court, the compensation was calculated on the basis of the Motor Vehicles Act, 1985. Interest was also awarded. The other decisions of the same High Court in such cases have been discussed.

11. Various other decisions have also been relied upon by Mr. Singh which need not be gone into.
12. Mr. Chatterjee, learned counsel appearing for the SALSA has fairly submitted that he is not going to stand in the way of any lawful entitlement of compensation of the writ petitioner.
13. In the backdrop of the above and considering the judicial dicta, this Court directs that the maximum permissible compensation should be paid to the petitioner in terms of the 2nd Schedule of the Motor Vehicle Act, 1985.
14. The principles laid down by the Supreme Court in the case of ***Sarla Verma (Smt) and Ors. Vs. Delhi Transport Corporation and Anr.*** reported in ***(2009) 6 SCC 121*** and in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680*** shall be appropriately borne in mind.
15. For the purpose of calculation of compensation by the SALSA as directed hereinabove, the petitioner shall produce necessary documents including proof of age and the last income proof and any other relevant documents of the victim. Appropriate interest may also be provided for by the SALSA.

16. It is expected that the State Legal Services Authority completes the process of assessment of compensation payable to the petitioner within a period of 2 months from date.
17. With the aforesaid observations, the instant writ petition shall stand disposed of.
18. There shall be no order as to costs.
19. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)