

(2010) 04 JH CK 0005
Jharkhand High Court
Case No: None

Sajda Khatoon

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: April 23, 2010

Citation: (2010) 4 JLR 650 : (2011) ACJ 2180

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.

The petitioner in this writ application, has prayed for a direction upon the respondents to pay adequate compensation to her for the alleged custodial death of her husband which had occurred while the deceased was under custody at the sub-jail, Simdega.

2. The undisputed facts of the case in brief are as follows:

The deceased Md. Shamim had sustained injuries on his body as a result of alleged assault made on him by one Md. Rafique, a resident of same mohalla as that of the deceased. In respect of this incident which had occurred on 4.7.2003, a first information report was lodged at the police station. The victim was removed to Sadar Hospital, Simdega where he was given initial treatment, but later, upon being referred by the attending doctor at the Sadar Hospital, Simdega, he was removed to the RIMS, Ranchi.

3. After undergoing treatment and upon being cured, he was remanded to judicial custody at sub-jail, Simdega on 13.8.2003. On 22.8.2003, the doctor at the sub-jail, Simdega had examined him and found him to be suffering from Jaundice as appearing from the entries made in the jail hospital register. The doctor had prescribed few medicines and had purportedly advised the jail authorities to remove

the patient to the Sadar Hospital on the next day.

4. However, in the early hours of 23.08.2003, finding his condition serious, the jail authorities took him to the hospital where he was declared brought dead.

5. Death of the prisoner caused widespread resentment not only amongst the members of the family of the deceased, but also in the town. Considering the matter serious, the Deputy Commissioner of the district directed for an inquest on the dead body of the deceased to be conducted by an Executive Magistrate and had also directed the Executive Magistrate to conduct an inquiry for ascertaining the cause of death of the deceased. A medical Board comprising of three doctors was constituted for conducting autopsy on the dead body of the deceased.

The postmortem report declared that the cause of death of the deceased was on account of rupture of his spleen and such injury could have been caused on account of violence or even due to fall.

6. Alleging that her husband was subjected to custodial violence, which had resulted in the death of the victim, the petitioner being the widow of the deceased prisoner, accused the jail authorities for having caused the death of her husband by assaulting the victim at the behest of the accused in the criminal case namely, Md. Rafique.

7. The Deputy Commissioner of the district released and paid a sum of Rs. 10,000/- by way of compensation to the petitioner. However, not being satisfied with the amount, the petitioner has filed the present writ application for directing the respondent State authorities to pay her a reasonable and adequate compensation commensurate with the earnings of the deceased as he was by profession a tailor and used to earn between Rs. 4000-5000 per month and that, at the time of his death, he was only 35 years of age and besides the petitioner being the widow of the deceased, there were altogether six more dependants including the old mother of the deceased and five minor children.

8. Two separate sets of counter-affidavits have been filed on behalf of the respondents. One, by the respondent No. 5 namely, the Superintendent of Police, Simdega and other by the respondent No. 7 namely, Jail Superintendent, Sub-Jail, Simdega. As it appears from the statement contained in the counter-affidavits, a common stand has been taken by both the respondents, that admittedly, the deceased had suffered bodily injury at the hands of the accused of the criminal case and for the treatment of the injury, the deceased was admitted to the hospital in between the date of occurrence i.e. 4.7.2003 till 13.8.2003. The deceased was not fully cured and used to frequently complain of illness and he used to be regularly attended by the jail doctor. On 22.8.2003, the jail doctor had examined the deceased and had advised the jail authorities to admit him to the Sadar Hospital in the morning of the next day, but in the night of 23.08.2003, the deceased fell seriously ill and was promptly removed to the hospital at about 2.30 AM, but he died in course

of treatment. Denying the petitioner's claim of the death of the deceased being due to custodial violence, the explanation offered by the respondents is that on account of the violence which he had suffered at the hands of the accused in the criminal case, the spleen of the deceased was enlarged and as confirmed by the postmortem report, the death was on account of rupture of the spleen. As such, it was a case of natural death and not on account of custodial violence. The respondents have thus sought to deny their liability to pay any compensation to the petitioner, refusing to acknowledge their responsibility for the death of the deceased.

In the supplementary counter affidavit of the respondent Superintendent of Police, Simdega as also that of the respondent Jail Superintendent, Sub-Jail, Simdega, it is acknowledged that the petitioner was paid compensation of Rs. 10,000/- for the death of her husband.

9. I have heard learned Counsel for the parties and have also gone through the documents on record. There appears four significant documents essential for consideration. The first document is a photocopy of the extracts of the jail hospital register pertaining to the medical treatment of the deceased on 22.8.2003. The endorsement in the register made by the attending doctor indicates that the doctor had prescribed few medicines including liver tonic and B. complex tablets. As it appears, the prescription has been written and signed by the doctor in English, but on the margin of the page, there appears a purported advice of the doctor for admitting the patient to the hospital on the next day, written in Hindi and in a different handwriting. The respondents have not given a specific or definite statement identifying the author of the Hindi writings made in the register. Be that as it may, as per the prescription, it appears that the doctor did not find the patient to be suffering from any serious ailment save and except from liver problem.

The second document is the inquest report prepared by the Executive Magistrate on the dead body of the deceased on 23.08.2003, reference to which has been made in para-16 of the counter-affidavit of the respondent No. 8 and annexed as annexure-C. It appears from the endorsement made by the Magistrate in the column pertaining to the apparent cause of death, the Magistrate had opined that the death appears to have been caused due to assault.

On comparison of the two documents, it appears that on 22.8.2003 when the doctor had examined the prisoner, he did not find any external injury on the body of the prisoner. Though the Magistrate has not recorded any final and definite opinion, but the opinion which he has recorded on examination of the dead body of the deceased does not suggest that the death of the prisoner was a case of natural death.

The third document which is of relevance, is the postmortem report (Annexure-B to the counter-affidavit of the respondent No. 7). The postmortem examination was conducted in the afternoon of 23.08.2003. The doctors conducting autopsy did not

find any external injury on the body of the deceased and the only injury which they had found was rupture of the spleen, which in their opinion, was the cause of death.

It appears that taking cue from the opinion expressed regarding the cause of death of the deceased, the respondents have wanted to explain that the rupture of the spleen was either on account of the injury which the deceased had sustained at the hands of the accused in the criminal case on 4.7.2003, or on account of fall which the deceased may have suffered. These suggestions are not supported by any independent and firm basis. Rather, the medical register of the jail hospital and the postmortem report contradict these suggestions of the respondents. As observed above, upon his examining the patient on 22.8.2003, the doctor had not found any external injury on the body of the patient, nor did he find any palpable inflammation of the spleen and according to his diagnosis, the patient was suffering from jaundice.

The next relevant and significant document is the Inquiry Report of the Executive Magistrate dated 14.10.2003 (Annexure-F). On going through the report, it appears that the Magistrate had conducted a detailed inquiry by examining the witnesses including the jail authorities as also some of the jail inmates and had also perused the relevant documents including the jail hospital register. This Inquiry had revealed some glaring facts and notable amongst which are,

- i. that the deceased was examined by the jail doctor on 22.8.2003 and upon examination, the jail doctor had advised the jail authority to admit the patient to the Sadar Hospital on the next day.
- ii. The jail doctor who was also the Medical Officer of the Sadar Hospital, Simdega and the jail authorities blame each other for the death of the prisoner.
- iii. the patient was removed to the hospital in the early hours of 23.8.2003 at about 2.40 PM, but no doctor was available at the hospital. Later, the doctor who examined the patient, had declared the patient to be brought dead.

At the conclusion of his inquiry, the Magistrate has recorded his finding that while the jail administration has tried to shift the blame for the death of the deceased on the jail doctor, the jail doctor has been trying to shift the blame on the jail authorities. In the opinion of the Magistrate, death of the deceased had occurred on account of the negligence of the jail doctor.

10. It is obvious that on the basis of the Inquiry Report submitted by the Executive Magistrate, the Deputy Commissioner of the district had acknowledged that the death of the prisoner while in judicial custody, had occurred on account of negligence of the concerned officials including the jail doctor and upon such acknowledgment of fact, the compensation amount to the extent of Rs. 10,000/- was released and paid by the Deputy Commissioner to the widow of the deceased namely, the present petitioner.

11. The facts on careful analysis, amply demonstrate that the death of the under trial prisoner while in jail custody, had occurred on account of gross negligenc and lapses on the part of the concerned authorities of the sub-jail, Simdega. Under such circumstances, the State Government cannot therefore disown its liability for the acts and omissions on the part of its servants which had resulted in the premature death of the deceased. Such liability appears to have been already acknowledged by the Deputy Commissioner who had made prompt payment of the sum of Rs. 10,000/- within the limit of his financial powers by way of compensation to the widow of the deceased.

12. The petitioner in her supplementary affidavit, has declared that the deceased who was aged 35 years at the time of his death, was a tailor by profession and used to earn in between Rs. 4000-5000/- per month and besides the petitioner being the surviving widow of the deceased, there are five minor children and widowed mother of the deceased and all of whom were dependants upon the earnings of the deceased. These statements have not been denied or disputed by the respondents.

13. Considering the above facts, the State Government is liable to pay a reasonable amount of compensation for the premature death of the deceased husband of the petitioner and considering the earnings of the deceased and dependency of the surviving members of his family, in my opinion, the dependant surviving members of the deceased do deserve a compensation of Rs. 5.00 lakhs as a reasonable compensation for the death of the deceased.

14. Accordingly, I direct the respondent State Government to pay to the petitioner a sum of Rs. 5.00 lakhs by way of compensation to her, within one month from the date of receipt/production of a copy of this order.

15. With the above observations and directions, this writ application is disposed of.