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IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.16845 of 2012
(Through hybrid mode)**

Jaladhar Jena

Petitioner

-versus-

Union of India and others

Opposite Parties

Advocates appeared in the case:

For Petitioner : Mr. A. Sahoo, Advocate

For Opposite Parties : Mr. C. K. Pradhan, Sr. Panel Counsel

CORAM: JUSTICE ARINDAM SINHA

JUDGMENT

18.10.2022

सत्यमेव जयते

1. Mr. Sahoo, learned advocate appears on behalf of petitioner and submits, his client lost his son, who died when he was in school. By the writ petition his client has sought compensation. On earlier occasion Mr. Pradhan, learned advocate, Senior Panel Counsel appearing on behalf of Union of India had submitted, Rs.50,000/- was sanctioned but petitioner did not turn up to receive the same.

2. Mr. Sahoo, submits, the boy suffered injury and died. He refers to information obtained by writing dated 19th June, 2012, on query

made under Right to Information Act, 2005, disclosed under annexure-3 at page-10. Treatment status stated therein is extracted and reproduced below.

*“The laceration of up lip was stitched by Bhakta Charan Sahoo and treated with required medicines. **The prescription has been handed over to the attendant of patient.** The treatment hours in P.H.C(N), Konark is approximately 1 ½ hours. **The patient was then referred to Capital Hospital, BBSR due to headache for CT scan.**”*

(emphasis supplied)

He submits, the scan was not made. There was, therefore, negligence on part of the school.

3. He relies on **judgment dated 11th August, 2022** by the first Division Bench of this Court in **Writ Petition (Civil) no.7584 of 2014 (Madhav Soren v. State of Odisha and others)** and order dated **10th May, 2022** of this Bench in **W.P.(C) no.20443 of 2012 (Sanjay Kumar Mohanty and another v. State of Odisha and others)**, wherein **order dated 30th September, 2021** also made by the first Division Bench of this Court in **W.P.(C) no.24882 of 2012, (Jambeswar Naik and another v. State of Odisha and others)** was relied upon. All the cases were regarding death of school children, where compensation awarded was Rs.10 lakhs.

4. Mr. Pradhan submits, there was no negligence on part of the school. In the play ground, cricket bat slipped out of hands of a student, who was batting and hit the child, since deceased. It was an accident.

5. In the cases relied upon on behalf of petitioner, the victim children had died. On finding of negligence, State was directed to pay compensation at Rs.10,00,000/-. Here, the school is under the Central Government. Earlier, adjournment was granted for the school to consider its position and issue instructions. Mr. Pradhan submits, additional affidavit has been filed on 11th October, 2022. The affidavit is not in file. He hands up a copy. Relied upon paragraph nos.6 and 7 in the affidavit are extracted and reproduced below.

*“6. That as seen from the prescription of PHC Hospital (attached therewith as Annexure-R/1) the treatment was given promptly as prescribed by the doctor when the patient was not recovering, the Doctor referred the patient to Capital Hospital, Bhubaneswar for further treatment, the patient was immediately shifted to Bhubaneswar **duly escorted by the staff of the School** by road at a distance of about 66-70Kms.*

7. That the allegation of the Petitioner has already been denied in para-12 of the Counter Reply with the submissions that during the treatment the doctor on duty

PHC Konark prescribed 5 days medicines. As the patient was stable, no swelling and no head injury, but in the night when the condition of the patient was marked deteriorating, the doctor was again consulted and on his advice given on prescription, the patient was immediately taken to Hospital at Bhubaneswar for further treatment. As evident from the prescription, the Doctor at PHC Konark had neither told us nor advised for CT Scan (copy of prescription attached with Counter Reply as Annexure R/1). Hence, it is expected that the petitioner had managed & procured the modified status of treatment after 7 months under RTI Act from the office of PHC Konark as the original prescriptions of treatment were handed over to the relatives of deceased student at Bhubaneswar on 03.11.2011. The petitioner did not submit the original prescription along with his writ petition. ”

(emphasis supplied)

In the counter too there is allegation that the doctor at PHC Konark had not told nor advised for CT Scan.

6. Petitioner's contention is that there was contributory negligence on part of the school leading to death of the child. Hence, reliance on **judgment dated 11th August, 2022** (supra), and **orders dated 10th May, 2022** (supra) and **30th September, 2021**(supra) regarding award of compensation at Rs.10,00,000/- on finding of

contributory negligence. Prayer of petitioner is for compensation, modestly estimated at Rs.5,00,000/- along with further prayer for issuance of such order or direction as may deem fit and proper to the Court. The First Division Bench of this Court, on finding of contributory negligence, had quantified the compensation at Rs.10,00,000/- by **judgment dated 11th August, 2022**(supra) and **order dated 30th September, 2021** (supra), the latter followed by this Bench on **order dated 10th May, 2022** (supra). Therefore, the controversy to be decided here is whether or not there was contributory negligence on part of the school, where quantification of the compensation already stands decided.

7. Petitioner has relied on 'treatment status' obtained by writing dated 19th June, 2012, in answer to query made under the Act of 2005. In that context it is necessary to ascertain the facts. For the purpose, a passage from paragraph 5 of the counter is extracted and reproduced below.

“5. That the brief facts of the case is that Jayaram Jena was a student of Class-XII (Science) in JNV, Konark and he was boarder of school hostel. He was playing cricket along with some of his classmates in the play ground on 02.11.2011 at about 5.00 P.M. The accident was

occurred like this. One student named Sriram Pidikaka was batting and Jayram was standing in front of the batsman as a fielder. While batting a ball, the bat slipped from the hand of the batsman and hit to the mouth of Jayaram Jena. He fell down on the ground and without any delay Master Jayaram Jena was taken to the nearby available Konark PHC Hospital escorted by Staff Nurse, House Master and other teachers. Medical Officer on duty started treatment immediately. Doctor gave saline drips, medicines and stitched the injury on the lip and kept under observation. The parents was contacted by Dr. D. K. Mishra, the House Master over phone on 02.11.2011 in evening time to time during the treatment at PHC, Konark and appraised the condition of their son. As per the Doctor's advice the patient shifted to Bhubaneswar escorted by Staff Nurse, House Master & other teacher in the same night for further treatment. The patient was admitted in the Hospital on 03.11.2011 at 4.45 a.m and immediately started treatment in ICU and immediately Parents were also contacted over Phone during the admission in Hospital on 03.11.2011 at 4.45 a.m. as the parents were staying at Rayagada, the paternal uncle of the boy namely Mr. Gunamani Jena, cousin brother Mr. Subhas Chandra Jena and some other relatives staying at Bhubaneswar came to the hospital on 03.11.2011 at 5.10 a.m and observed the condition of the boy in the ICU and after all efforts made by doctor, the student Jayaram Jena was not survived, lastly the doctor declared as dead in the

morning at about 5.55a.m on 03.11.2011 in presence of Mr. Gunamani Jena, Mr. Subhas Chandra Jena & other relatives, Dr. D. K. Mishra, the House Master, Mr. J. S. Mahalik, PGT(English) and Mrs. P. Mohanty, Staff Nurse.”

8. On query from Court, Mr. Pradhan submits, deponent of the additional affidavit, said to be filed on 11th October, 2022, was not in the school on 2nd or 3rd November, 2011. On further query from Court Mr. Pradhan submits, the deponent recently joined the school. As such, evidentiary value of allegations made in said additional affidavit is of little or no effect. So much so, statements made in the counter, were affirmed by the then Principal of the school, a person who had succeeded to the office after the principal, officiating at the material time, had vacated it. Furthermore, under paragraph 7 in the counter, copy of prescription of PHC, Konark stands annexed and marked as R/1. The document at R/1 is ticket for outdoor patients. The ticket is said to be prescription given by the hospital, as it appears to contain particulars of medication. What it does prove is, the school, in event it had handed over original prescriptions to family members of the deceased, as alleged in the additional affidavit, retained copies. In the circumstances, further allegation of expectation that petitioner had

managed and procured to obtain modified 'status of treatment' after 7 months under the Act of 2005 from office of PHC, Konark, as the original prescriptions of treatment were handed over to the relatives, is reckless to say the least.

9. In analyzing the facts, it appears 'treatment status' reported by PHC, Konark had recommended CT scan be done on the boy. Court has no reason to disbelieve the 'treatment status', obtained by petitioner on query made under the Act of 2005. There is no necessity to require PHC, Konark to file affidavit evidence since, the information furnished under the Act of 2005 is to be taken as duly done. The referral by the hospital is not disputed and also appears from annexure R/1, relied upon as prescription by the school. Parents of the boy were staying at Rayagada. They were not in the scene post accident, treatment at PHC, Konark and, thereafter, on referral, Sparsh Hospital, Bhubaneswar.

10. It also appears that on the deterioration of condition and referral, the parents were again contacted. In turn the parents contacted paternal uncle of the boy, petitioner's cousin brother and some other relatives staying at Bhubaneswar, who reached Sparsh Hospital on 3rd November, 2011 at 5.10a.m.. The boy was declared dead on that day

at 5:55a.m.. In the circumstances, it is clear that neither the relatives nor the parents participated in causing the boy to receive medical attention post accident. There is also no dispute that CT Scan was not done, when the child had complained of headache, mild or otherwise.

11. Court is convinced there was contributory negligence on part of the school leading to loss of the young life. In the circumstances, following **judgment dated 11th August, 2022** (supra) and **order dated 30th September, 2021**(supra), there will be direction upon opposite parties, jointly and severally, to pay compensation of Rs.10,00,000/- to petitioner within four weeks from date. In event payment is not made, the amount will carry interest at 5% per annum simple, calculated on and from 7th September, 2012, being date of presentation of the writ petition, till date of payment.

12. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant