

**IN THE GAUHATI HIGH COURT**

(The High Court of Assam, Nagaland, Meghalaya,  
Manipur, Tripura, Mizoram & Arunachal Pradesh)

**IMPHAL BENCH**

**WRIT PETITION (CRIL) NO.71 OF 2009**

Smt Thaodem Ongbi Memma Devi,  
aged about 56 years w/o (L) Th.  
Ibochouba Singh, resident of Kakwa  
Lamdaibung, PO & PS Singjamei,  
Imphal East District, Manipur.

*...Petitioner*

**Versus**

1. The State of Manipur,  
represented through Principal  
Secretary/Commissioner (Home),  
Government of Manipur.
2. The Senior Superintendent of Police,  
Imphal West District,  
Government of Manipur.
3. The Union of India representing through  
Secretary Ministry of Home Affairs,  
North Block, New Delhi.
4. The Commandant 16<sup>th</sup> Assam Rifle.

*...Respondents*

**P R E S E N T**  
**THE HON'BLE MR.JUSTICE T.NK SINGH**  
**THE HON'BLE MR.JUSTICE MUTUM BK SINGH**

|                        |    |                                        |
|------------------------|----|----------------------------------------|
| For the Petitioner     | :: | Mr.Devananda, Advocate                 |
| For the Respondents    | :: | Mr.R.S.Reisang, GA<br>Mr.C.Kamal, CGSC |
| Date of hearing        | :: | 04.08.2011                             |
| Date of judgment/order | :: | 25.08.2011.                            |

## JUDGMENT AND ORDER

*(T.NK.Singh,J)*

The petitioner is the mother of the deceased, Thaodem Shantikumar Singh, who was killed by the combined personnel of Imphal West Police Commando and 16<sup>th</sup> Assam Rifles, while he was in their custody, and is seeking monetary compensation (by way of public remedy) as exemplary damages for established infringement of indefeasible right of her late son, under Article 21 of the Constitution of India inasmuch as award of compensation as a public remedy is in addition to the private law remedy under the law of torts.

[2] Heard Mr.M.Devananda, learned counsel for the petitioner, Mr.R.S.Reisang, learned GA appearing for respondent Nos.1 and 2 as well as Mr.C.Kamal, learned CGSC appearing for respondent No.3.

[3] FACTUAL BACKGROUND:

Petitioner's son, late Thaodem Shantikumar Singh was a civilian and also a labourer for building construction and tutor for students from classes V to VIII. Late Thaodem Shantikumar Singh, read upto Class XII and he was earning Rs.4,000/- only per month from working as labourer for building construction and tutor of his locality and with the said income he was maintaining his widow mother, i.e. present writ petitioner.

[4] On 24.03.2009 at about 11.30 am, deceased Thaodem Shantikumar Singh was picked up by a combined force of the Imphal West Police Commando and 16<sup>th</sup> Assam Rifles from Kakwa Nameirakpam Leikai near Community Hall on his way to Manipur University to attend Youth Festival from his home after meeting his local friends.

On the same evening of 24.03.2009 at about 4.50 pm the deceased Shantikumar was killed by the combined force of Imphal West Police Commando and 16<sup>th</sup> Assam Rifles at New Tairenpokpi, Lamshang in a fake encounter. A false case being FIR No.16 (3) 09 LSG PS under Section 307/34 IPC, 25 (1-C) A Act, 5 Expl Act, 20 UA (P) A Act was registered by the Lamshang P.S. The death of late Shantikumar Singh came to know by the members of his family at about 9 pm through the ISTV news, and after receiving the said news of the death of late

Th. Shantikumar Singh, local people formed Joint Action Committee (JAC) against the brutal killing of late deceased Shantikumar Singh. The JAC submitted representation dated 26.03.2009 to the Hon'ble Chief Minister, Manipur and they demanded that (1) the culprits who involve in the killing, i.e. member of the combined force of Imphal West Police Commando and 16<sup>th</sup> Assam Rifles should be punished for killing the deceased Shantikumar; (2) dead body of the deceased Shantikumar will not be taken until the culprits are punished; and (3) the State Government should take proper actions not to happen such type of incident in future. But no action was taken up from the side of the Hon'ble Chief Minister, Manipur.

[5] The outlawed organization, KYKL issued a clarification which was published in the local daily newspaper on 27.03.2009 that the allegation of S.P, Imphal West District, Manipur that “deceased Shantikumar Singh, was picked up on the same day at about 11.30 am from the Kakwa Nameirakpam Leikai, near Community Hall by the civil dress Police personnel who came in maruti van, and killed at Tairenpokpi Maning Leikai in the exchange of fire” are not correct and also that “the deceased, Shantikumar was a member of the KYKL” is also not correct.

[6] Post mortem examination of the dead body of deceased Shantikumar was conducted by one Dr. Memchoubi Ph on 30.03.2009 in connection with the said case. Cause of death of Shantikumar Singh, according to the Doctor was “due to injury to the vital organs produces by firearm injuries to the chest and abdomen, homicidal in nature.”

[7] Deceased, Shantikumar was a student of S.I. Boarding School, Canchipur, in the year 2003 and the Headmaster of S.I. Boarding School issued certificate that the deceased, Shantikumar Singh was a student of the school during the year 2003 with regular attendance, as such the deceased Shantikumar Singh, is a member of the underground organization, KYKL of 2000 batch is not correct. The act of killing of the deceased, Shantikumar Singh in a fake encounter with the extremists by the combined personnel i.e. Imphal West Police Commando and personnel of 16<sup>th</sup> Assam Rifles is an act of terrorism and also the security personnel after killing the innocent had concocted charge against the

deceased citizen that the innocent citizen was killed in an encounter. As all the representations filed by the JAC to the Chief Minister, Manipur and other authorities of Manipur and also the Security Personnel are fruitless, the petitioner filed the present writ petition for a direction to the respondents to pay a sum of Rs.20 lakhs as compensation for the killing of deceased Shantikumar Singh, in a fake encounter in counter by the security personnel, i.e. personnel of Imphal West Police Commando and 16<sup>th</sup> Assam Rifles, while the deceased Shantikumar, was in their custody after arrest.

[8] Respondent No.2, the Superintendent of Police, Imphal West District, Manipur filed affidavit in opposition stating that on 24.03.2009 at about 5.15 pm, S.I., M.Goberdhon Singh, C.D.O Imphal West lodged a written report with OC, Lamsang Police Station stating that on the same day at about 4.25 pm he received a credible information regarding presence of valley based underground camp at New Tairenpokpi area. Based on the said information, the said S.I. M.Goberdhon Singh along with a combined team of Imphal West C.D.O and a column of 16 Assam Rifles rushed in the area to apprehend the UGs at about 3.50 pm. On reaching New Tairenpokpi hill side, 2/3 armed militants suddenly jumped out from hill side at about a distance of 150 yards and started firing towards the C.D.Os and Assam Rifles. A heavy gunfire also came from the upper hill side by 10/15 armed militants by using lathod bomb. The combined force also retaliated and encounter took place about 15 minutes. During the encounter 5/10 militants with intermittent firing escape towards western hill side and other 5/6 armed militants managed to escape towards southern hill side. After the encounter, searched the area and found one dead body wearing grey jacket. One 9 mm carbine with 4 live rounds in the magazine was recovered from nearby the dead body. On further checking, one AK magazine having 15 live rounds, one empty case of lathod bomb, 4 (four) empty cases of AK Rifles and 2 (two) empty case of 9 mm ammunition were recovered from the spot and a case, i.e. FIR Case No.16 (3)09 under Section 307/34 IPC, 25 (1-C) Arms Act, 5 Expl Sub Act and 20 UA(P) A Act of Lamsang Police Station was registered and investigated into. The said dead person was deceased Shantikumar Singh, who was a member of KYKL and also that the deceased Shantikumar had

involved in extortion of huge amount of money from the Government officials and businessmen of Manipur.

[9] Respondent Nos.3, 4 and 5 also filed joint affidavit in opposition wherein it is stated that on 24.03.2009, Imphal West Police Commando received information regarding presence of temporary camp of valley based underground groups at general area New Tairenpokpi. A joint operation was immediately planned and the joint column rushed towards the said area. A joint operation was conducted jointly by the personnel of Imphal West Police Commando (IWPC) and troops of 16<sup>th</sup> A.R. The troop of 16<sup>th</sup> Assam Rifles linked up with the column of IWPC at Phayeng Chowk and from there the joint column rushed towards New Tairenpokpi. When the joint column was about to reach New Tairenpokpi hill side, suddenly 2/3 armed militants emerged from the hill side and started firing indiscriminately towards the joint column from approx 150 yards ahead. Immediately, SI, M.Goberdhon Singh of IWPC along with his team jumped out from the vehicle and retaliated the militants' fire. Troops of 16<sup>th</sup> A.R. following the IWPC also deployed immediately and joined in the fire fight. Heavy gun fire including lathode fire also came from the upper reach of the hill. The fire fight lasted for approx 15 minutes. After the fire fight was over, search of the area was carried out and the following were recovered the following:

- “i) 01 x Dead body.
- ii) 01 x Sten Carbine Machine Gun.
- iii) 01 x Magazine filled with 04 x live rounds.
- iv) 01 x AK Magazine filled with 15 x live rounds.
- v) 01 x Fired case of Lathode bomb.
- vi) 04 x Fired cases of AK rifle.
- vii) 02 x Fired cases of 9 mm amn.”

[10] The identity of the killed cadre of KYKL was deceased Th.Shantikumar Singh, son of the writ petitioner, resident of Kakwa Lamdaibung, P.S. Singjamei. As there was disputed question of fact leading to the death of deceased Shantikumar Singh, this Court passed order dated 05.03.2010 directing the Addl.District & Sessions Judge

(Fast Track Court) Imphal West to make an inquiry regarding the said disputed question of fact and submit his report. The parties appeared before the learned Addl District & Sessions Judge, Imphal West, and produced witnesses and documents in support of their respective cases.

As stated above, it is not disputed by the parties that Th.Shantikumar, was killed by the security personnel but the disputed question is, if the deceased Shantikumar was killed in the encounter as alleged by the respondents in their affidavit in opposition.

[11] The petitioner examined six witnesses i.e. PWs namely viz: PW.1-Thoudam Memma Devi, PW.2-Shri Laishram Thoubu Singh, PW.3-Shri Thadem Giri Singh, PW.4-Smt Nongthombam Rashi Devi, PW.5- Ningthoujam Nganbi Devi and PW.6-Smt Thokchom Leimatombi Devi. The State respondents examined only one witness i.e. S.I. M.Goberdhon Singh (D.W.No.1). PW.1, i.e. present petitioner deposed that deceased Shantikumar, read upto class-XII and he was a daily bread earner working as labourer in building construction and also took tuition class of the students reading in classes V to VIII of his locality and he could earn about Rs.4,000/- per month. One day at about 10 a.m about two years ago (PW.1 was examined on 14<sup>th</sup> December 2010) deceased Shantikumar told her that he has to attend a party to be arranged by his friends somewhere at Canchipur and thereafter he left their residence. At about noon of the same day, information came that her son Shantikumar was apprehended by the combined force near Community Hall of Kakwa Nameirakpam Leikai. After some time some of their locality members went to Singjamei Police Station to enquire as to whether the said Shantikumar Singh was handed over to the Police Station by security personnel and on the same day in the evening it was broadcast in local news i.e. ISTV that in an encounter a hardcore of KYKL was gunned down by combined force of Imphal West Police Commando and 16<sup>th</sup> Assam Rifles at New Tairenpokpi. The dead body was kept at RIMS mortuary. The next morning her relatives went to the RIMS morgue and confirmed that the dead body was that of his son deceased, Shantikumar.

[12] PW.2, Laishram Thoubal, deposed that he and Shantikumar were at the same class and they read upto class III standard at Kakwa Nameirakpam Leikai Boys School. After passing the matriculation examination they were studying together at International School of Resource at Waikhom Leikai, Imphal West. However, deceased Shantikumar did not appear final examination of Class XII standard from the school and he left his studies in order to earn his livelihood as well as to help members of his family by engaging himself as a mason. On 24.03.2009 morning at about 9 a.m. the deceased Shantikumar came to his residence and suggested for going to Canchipur University and he told him to get ready for going to Manipur University; and thereafter Shantikumar left his residence. But he did not come back to his house on that day. At about 2 pm of that day information came to him that deceased Shantikumar was arrested by some security personnel. He further stated that Shantikumar was neither involved in any underground activities nor himself is a member of any outlaw organization.

[13] PW.3, Shri Thoudem Giri Singh deposed that he is a government servant by profession and he knows the deceased Shantikumar since his childhood and he is living at the same locality and house of deceased Shantikumar and his house is very near having a common courtyard. On 24.03.2009 when he was about to take bath in the morning the deceased Shantikumar came to his place as usual in the earlier occasions. Thereafter he left his place; that was the last occasion he saw deceased Shantikumar alive and deceased Shantikumar works as a manual labour under the guideline of his brother in law and that on that particular day i.e. 24.03.2009 when he returned from his office at about 4 pm he came to learn that deceased Shantikumar was apprehended from Kakwa Nameirakpam Leikai near Community Hall by plain clothed security personnel in a car. On the same day in the news broadcast of local TV channel i.e., ISTV there was a news item that in an incident of which took place at Tairenpokpi an unidentified person was shot dead and dead body of the victim was shown in the telecast. On suspicion of the dead body to be that of deceased Shantikumar, he along with his relatives went to the RIMS mortuary and confirmed that the person was deceased Shantikumar Singh. A Joint Action Committee was formed consisting of local people in protest against the killing of

deceased Shantikumar Singh by security personnel; on the very day they came to know the killing of Shantikumar Singh by the security personnel.

[14] PW.4-Nongthombam Rashi Devi deposed that she is a resident of Tairenpokpi Ching, P.S. Lamshang, Imphal West District. In the month of March 2009 there was an incident of firing at her village. Her village consists of about 20 domestic houses; on that particular day at about 4.30 p.m. she saw some ¾ police vehicles with security personnel coming to her village which is situated in a hillock. About ten minutes after the arrival of the security personnel she heard two firing shots. After hearing gun shots, womenfolk rushed out from their house, gave alarm by hitting electric posts with stones. After about ten minutes the security forces in their vehicle returned. The womenfolk tried to stop them in order to enquire whether any villager of their village was involved in the firing, security forces did not allow them to stop their vehicle - instead replied that none of the local people were involved in the said incident. They went to the morgue for verification. She further stated that there was no incident of any search operation conducted by the security personnel in her locality. PW.4 who is a resident of Tairenpokpi, where the deceased Shantikumar was killed stated that there was no search operation by combined security forces and there was no encounter between combined security forces and members of the extremists of KYKL. But she stated that she heard only 2/3 gun shots and in that gun shot a person was killed. The statements of PW 4 were also corroborated by the statement of PW.5. The statement of PW.1 that the deceased Shantikumar was arrested by the combined security personnel, i.e. personnel of Imphal West Police Commando and personnel of 16<sup>th</sup> Assam Rifles was also corroborated by PW Nos.2, 3 and 6. The respondents examined only one Defence Witness i.e. DW.1 to prove their case that deceased Shantikumar was killed in an encounter on 24.03.2009.

[15] The learned Addl District & Sessions Judge, after appreciation of statements of PWs and DWs and also documents and respective pleadings of parties submitted his report dated 08.04.2011 that the deceased was killed by the security personnel but there was no finding regarding justification for killing the deceased Shantikumar by the

combined security force. The learned Addl District Judge did not accept the case of security personnel that the deceased Shantikumar was killed in the encounter, but there is clear finding of learned Addl District Judge that there is no evidence for believing that Th.Shantikumar Singh was a member of KYKL.

[16] This court is not sitting as an appellate authority of the said report submitted by the learned Addl District & Sessions Judge (Fast Track Court) Imphal East dated 08.04.2011. What this court is required to see is as to whether there is high degree of probability of the case of the petitioner and if there is high degree of probability of the case of the petitioner and onus is shifted on the respondents and if respondents do not succeed in shifting back the onus by proving their case, the petitioner's the burden of proof can safely be deemed to have been discharged.

In the present case, on careful perusal of the statements of PWs before the learned Addl District & Sessions Judge (Fast Track Court, Imphal East) and also the annexures in the present writ petition, it appears that the case of the petitioner is convincing and more trustworthy than that of the respondents. Accordingly, this court, for the purpose of granting exemplary damages for established infringement of indefeasible right of late Th.Shantikumar Singh under Article 21 of the Constitution of India is of the considered view that there is sufficient material for believing the case of the petitioner inasmuch as the petitioner is not required to prove his case to the extent of degree required for convicting the concerned personnel of the combined security forces for murder of the deceased Th.Shantikumar Singh.

[17] This Court (incidentally one of us -Justice T.NK Singh, is party) in **Khumanthem Ongbi Pangabam Ningol Ibemhal Devi Vs State of Manipur & Ors : 2006 (Suppl) GLT 265** (in para 8 of the GLT) held as follows:

"8. Regarding the maintainability of the present writ petition, this court is of the considered view that it is not required to discuss time and again inasmuch as this court in a number of cases, viz:

- (1) 1995 (II) GLT 384 : Shri Ranjan Gogoi Vrs Union of India 7 7 Ors.
- (2) 1999 (2) GLT 202: Shri Kangujam Ongbi Devi Vrs State of Manipur & Ors.

- (3) 2003 (1) GLT 218: Terarongsen & Ors Vrs Union of India & Ors.
- (4) 2001 (2) GLT 419: Tarulata Devi Vrs State of Assam & Ors and
- (5) 2005(1) GLT 185: Kaisiliangmai (Th) Vrs Union of India and another cases,

held that the writ petition of the present nature is maintainable. For the sake of repetition, this court again repeats that for remedy under public law, the court can invoke “new tools” and would remedy to provide redressal in the case of deprivation of fundamental right like that under Article 21 of the Constitution of India and also that award of compensation in proceedings for enforcement of fundamental rights under Articles 32 and 226 is the remedy available in public law. . . . .”

[18] The Apex Court in **Rudul Sah Vs State of Bihar : (1983) 4 SCC 141** had considered the important question as to whether the Apex Court in exercise of its jurisdiction under Article 32 can pass an order for payment of money as compensation for deprivation of fundamental rights; and answered the question, thus, awarding compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. The ratio laid down in **Rudul Sah’s** case (supra) was also followed in **Bhim Singh Vs State of J & K : 1985) 4 SCC 677**.

[19] The Apex Court in **Nilabati Behera Vs State of Orissa : (1993) 2 SCC 746** held that “the public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by (the Supreme) Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is

not only to civilise public power but also to assure the citizens that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary awards' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort.

[20] It is now well settled that award of compensation is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, of the Constitution of India. This court also considered some of the important cases wherein the Apex court exercising its jurisdiction under Article 32 awarded compensation, i.e. **D.K. Basu Vs State of W.B : (1997) 1 SCC 416**, **Sube Singh Vs State of Haryana & Ors : (2006) 3 SCC 178**.

[21] The Apex Court in **D.K.Basu Vs State of West Bengal : (1997) 1 SCC 416** (para 9 and 22 of the SCC) held as follows:

"9. The importance of affirmed rights of very human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed

by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.

22. Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed Issue notice calling upon the respondents to show cause as to why contempt proceedings under Article 215 of the Constitution of India read with Contempt of Court's Act, 1971 should not be initiated as prayed for; or why such further or other orders should for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilized nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights' jurisprudence. The answer, indeed, has to be an emphatic "No". The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law".

[22] The Apex Court in **Sube Singh Vs State of Haryana & Ors : (2006) 3 SCC 178** (para 31, 32 and 34 of the SCC) held as follows:

"31. Though illegal detention and custodial torture were recognized as violations of the fundamental rights of life and liberty guaranteed under Article 21, to begin with, only the following reliefs were being granted in the writ petitions under Article 32 or 226:

- (a) direction to set at liberty the person detained, if the complaint was one of illegal detention.
- (b) Direction to the Government concerned to hold an inquiry and take action against the officers responsible for the violation.
- (c) If the enquiry or action taken by the department concerned was found to be not satisfactory, to direct an inquiry by an independent agency, usually the Central Bureau of Investigation.

Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades.

32. In the Bhagalpur Blinding case [Khatri (II) v. State of Bihar: (1981) 1 SCC 627] Bhagwati, J. (as he then was), speaking for the Bench, posed the following question while considering the relief that could be given by a court for violation of constitutional rights guaranteed in Article 21 of the Constitution: (SCC p.630, para 4)

“[B]ut if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of precious fundamental right to life and personal liberty.”

The question was expanded in a subsequent order in **Bhagalpur Blinding case [Khatri (IV) v. State of Bihar : (1981) 2 SCC 493]** thus: (SCC p.504, para 7)

“If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the court for injuncting the State from acting through such officer in violation of his fundamental right under Article 21? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would *ex concessione* be no breach of Article 21 and if he is acting without the authority of law, the State would be able to

contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who is aggrieved can move the court under Article 32 for a writ injunction such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the Court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the court for enforcement of his fundamental right, the court cannot give him any relief."

34. In **Rudul Sah V. State of Bihar: (1983) 4 SCC 141** the petitioner therein approached this Court under Article 32 of the Constitution alleging that though he was acquitted by the Sessions Court on 3.6.1968, he was released from jail only on 6.10.1982, after 14 years, and sought compensation for his illegal detention. This court while recognizing that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal, raised for consideration the important question as to whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for payment of money, as compensation for the deprivation of a fundamental right. This court answered the question thus while awarding compensation: (SCC pp.147-48, para 10)

"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 monetary compensation. Administrative sclerosis leading to flagrant infringement 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 civilization 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."

**Rudul Shah v State of Bihar, (1982) 4 SCC 141** was followed in **Bhim Singh v. State of J&K: (1985) 4 SCC 677** and **Peoples' Union for Democratic Rights v. Police Comnr : (1989) 4 SCC 730."**

[23] The Apex Court in **Sube Singh's** case (supra) held that degree of proof required in a criminal prosecution has been softened by the earlier decisions of the Supreme Court; in writ proceedings for compensation as public law remedy for violation of Article 21 of the Constitution of India. Para 47 of the SCC in **Sube Singh's** case (supra) read as follows:

"47. . . . . The public law remedy is additionally available where the conditions mentioned in the earlier paragraph are satisfied. We may also note that this Court has softened the degree of proof required in criminal prosecution relating to such matters. In **State of M.P. v. Shyamsunder Teivedi : (1995) 4 SCC 262**, reiterated in **Shakila Abdul Gafar Khan Vs Vasant Raghunath Dhoble: (2003) 7 SCC 749** and **Munshi Singh Gautam V State of M.P.: (2005) 9 SCC 631**, this Court observed: (SCC pp.272-73, paras 16-17)

" [R]arely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available,

... Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues, .....

.... The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar

circumstances of a given case, ..., often results in miscarriage of justice and makes the justice-delivery system suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are n the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture."

[24] Now the question is, what will be the quantum of compensation to be awarded for the death of Thaodem Shantikumar Singh?; and from the evidence on the record it is clear that Thaodem Shantikumar Singh was a young man. This Court in **Sagolsem Ongbi Latani Vs Union of India & Ors : 2010 (4) GLT 625** had awarded a compensation of Rs.4 lakhs for the death of S.Vikram Singh, who was aged about 22 years after taking into consideration of the minimum wage of the unskilled workers at the relevant time for the State of Manipur which was Rs.80/- per day. As on today the minimum wage of the unskilled worker of State of Manipur and minimum wage of unskilled worker for different projects of Central Government in the State of Manipur are more than Rs.100/- per day.

[25] The Apex Court in a catena of cases held that even in the absence of evidence to show the earning of the deceased, the court has to apply some hypothesis, some guesses as well as human consideration in determining the quantum of compensation. Regarding this point, we may refer to the decisions of the Apex Court in **Ashwani Kumar Mishra Vs P.Muniam Babu & Ors : (1994) 4 SCC 22** and **R.D.Hattangadi Vs Pest Control (India) Pvt Ltd & Ors : (1995)1 SCC 551**. We also take into consideration of the normal life span of a citizen of India, more particularly, the life span of the residents of Manipur, for calculating the amount of compensation and are of the considered view that the normal life span of the residents of the State of Manipur is about 70 years.

[26] We have also taken into consideration of the earlier judgment of this court for awarding compensation in the similar cases and also the earning capacity of the deceased Th.Shantikumar Singh and are of the view that the approximate amount of compensation would be Rs.5 lakhs for the death of Shantikumar Singh. We further hold that respondents are jointly and severally liable to pay the said amount of compensation of Rs.5 lakhs, and accordingly, respondent Nos.1 and 2 i.e. the State Government shall pay a half of the said award (Rs.2.5 lakhs) and the remaining half (Rs.2.5 lakhs) shall be paid by respondent Nos.3 to 5 to the petitioner within a period of five months from the date of receipt of certified copy of this order.

However, it is made clear that the above amount of compensation is in addition to additional remedies available in civil and criminal courts. This order will not come in the way of criminal courts in awarding compensation under Section 357 of the Cr.P.C and also will not come in the way of punishing the accused in the criminal proceedings and/other proceedings.

[26] Further the respondents are to pay a sum of Rs.6,000/- as fee for learned counsel for the petitioner in the present writ petition within five months from the date of receipt of certified copy of this order.

With the above observation and direction, the writ petition is allowed.

JUDGE

JUDGE