

ORISSA HIGH COURT: CUTTACK

AFR

W.P(C) NO. 21267 OF 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Bibhuti Charan Mohanty Petitioner

-Versus-

State of Odisha and Ors. Opp. Parties

For petitioner : M/s. R. Swain, B. Nayak,
P.K. Mohanty and D. Sahu,
Advocates

For opp. parties : Mr. D. Mohanty
Addl. Government Advocate
[O.Ps.1 to 3 & 5]

Mr. P.K. Mohanty, Sr. Advocate
along with M/s. P.K. Pasayat,
D.N. Mohapatra, J. Mohanty,
P.K. Nayak, S.N. Dash and
P. Mohanty, Advocates
[O.P.4]

P R E S E N T:

**THE HONOURABLE ACTING CHIEF JUSTICE DR. B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE MURAHARI SRI RAMAN**

Date of Hearing: 06.12.2023:: Date of Judgment: 13.12.2023

DR. B.R. SARANGI, ACJ. The petitioner, an advocate by profession, has filed this writ petition by way of public interest litigation, seeking direction to the opposite parties to control and check the roaming dogs within the human inhabitants and also take necessary, appropriate or adequate action for the protection of the human lives and to pay compensation of Rs.10.00 lakhs to the family of the deceased child.

2. The factual matrix of the case, in brief, is that one male child, namely, Satyabrata Rout, son of Hrudananda Rout at Jagannath Colony under Kumbharpada Police Station, Puri, while playing by the side of his house adjacent to the public road, on 01.12.2016, one after another four roving dogs furiously attacked him in the hunting manner. Hearing his cry, his mother and nearby neighbours came to the spot immediately, but the attack of the street dogs was so furious that within 2 to 3 minutes the child breathed his last. Neither his mother nor the other inmates could rescue the child from the clutches of the hunting dogs. The said child (Satyabrata Rout) was the only son of his

parents and his death caused havoc in the lives of the parents so also the relatives.

2.1. The said incident was published on 01.12.2016 in Odia daily newspapers, namely, "The Samaj" and "The Amrutadunia" and others. The petitioner also came to know the fact from the reporter/ editor concerned of the aforesaid newspapers. Therefore, he approached this Court by filing this writ petition seeking direction to the opposite parties to control and check the roaming dogs within the human inhabitants and also take necessary, appropriate or adequate action for the protection of the human lives and to pay compensation of Rs.10.00 lakhs to the family of the deceased child.

3. Mr. R. Swain, learned counsel appearing for the petitioner contended that due to frequent roaming and moving of dogs and other animals in the city serious incidents and road accidents are being caused, for which many people and children are losing their lives. Therefore, the roaming of dogs and other animals

in the city should be checked. It is further contended that the frightful incident has happened due to negligence on the part of the State Administration. It is the duty of the State to save and protect the lives of the people as per Article 21 of the Constitution. It is further contended that the father of the deceased child has lost his only son due to attack of the street dogs. Therefore, for the mental agony and sufferings incurred, he should be granted compensation of Rs.10.00 lakhs. But, the Municipal Authorities have washed their hands by giving a lump sum of Rs.50,000/- towards compensation. To substantiate his contentions, learned counsel for the petitioner has relied upon the judgment of the Chhattisgarh High Court in **Shobha Ram Rajwa Ram Sahu v. State of Chhattisgarh**, AIR Online 2018 CHH 1051 and **Yusub v. State of Karnatak**, AIR Online 2022 KAR 399.

4. Mr. P.K. Mohanty, learned Senior Counsel along with Mr. P. Mohanty, learned counsel appearing for opposite party no.4-Puri Municipal Corporation, referring to the counter affidavit, contended that

after reported occurrence of the tragic incident, opposite party no.4-Puri Municipality undertook suitable measures ABC (Animal Birth Control) programme. A total of 1620 (sixteen hundred twenty) numbers of stray dogs have been brought under sterilization operation and the said process is continuing. So far as compensation to the family of the deceased child is concerned, he contended that there is no provision under the Odisha Municipal Act, 1950 and/or any other statute for payment of any compensation in case of such unfortunate incident. Therefore, no liability arises for Puri Municipality in case of any death that may have occurred because of attack by stray dogs. But however, considering the gravity of the matter and dealing with the instant case sympathetically as well as giving due regard to the order of this Court, the Executive Officer, Puri Municipality contacted over telephone with the father of the deceased, who is now residing in Athagarh, Cuttack to submit the details of his bank account to transfer the compensation as admissible. In

order to alleviate the grievance of Hrudananda Rout, the parents of ill-fated child died due to stray dog bites in the year 2016, the Collector and District Magistrate, Puri was appraised of the matter, vide office letter no.7091 dated 24.01.2023, to grant financial assistance as admissible. Thereafter, the Collector and District Magistrate, Puri sanctioned an amount of Rs.30,000/- (rupees thirty thousand) out of Chief Minister Relief Fund, vide order no.394/Emer dated 22.02.2023, and Rs.20,000/- (rupees twenty thousand) from Red Cross Fund, vide order no.48/R.C. dated 22.02.2023, in favour of Hrudananda Rout, S/o- Nath Rout, At- Jagannath Colony with a direction to the Tahasildar, Puri to intimate the facts to the father of the deceased. Thus, in total Rs.50,000/- (rupees fifty thousand) has been paid to the father of the deceased child. It is also contended that after the said tragic incident, Puri Municipality has undertaken suitable steps, as a result of which no such

untoward incident has taken place within its jurisdiction. To substantiate his contentions, he has relied upon **Sarla Verma (Smt.) And Ors. v. Delhi Transport Corporation & Anr.**, (2009) 6 SCC 121.

5. Mr. D. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties relied upon the arguments advanced by Mr. P.K. Mohanty, learned Senior Counsel appearing for opposite party no.4-Puri Municipal Corporation and, as such, the State has not filed any counter affidavit in this writ petition.

6. This Court heard Mr. R. Swain, learned counsel appearing for the petitioner; Mr. D. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties and Mr. P. K. Mohanty, learned Senior Counsel along with Mr. P. Mohanty, learned counsel appearing for opposite party no.4-Puri Municipality in hybrid mode. The pleadings have been exchanged between the parties and with the consent of

learned counsel for the parties the writ petition is being disposed of finally at the stage of admission.

7. There is no dispute in the instant case that the father of the deceased child has lost his only child due to attack by street dogs and, as such, the parents could not be able to find out time to save his life by carrying him to the hospital, as death occurred instantly within 2 to 3 minutes of the attack by street dogs. To compensate the mental agony and sufferings of the parents of the deceased child, the Municipal Authority has granted a sum of Rs.50,000/- as compensation.

8. In Hamlet, IV, v, in the words of Shakespeare *when sorrows come, they come not single species, but in battalions*. Due to such frightful event, the parents lost their only child because of victimization of the street dogs. As such nobody saved the life of Satyabrata, who breathed his life within 2 or 3 minutes of the bites of the dogs.

In “The Borderers”, William Butler Yeats told that “suffering is permanent, obscure, and dark, and shares the nature of infinity”

9. As such, suffering is permanent, obscure, and dark, and shares the nature of infinity. The death of the only child has caused mental agony to the parents and from that they have not well recouped and it will continue throughout their lives. Apart from the same, the mother of the child, who was the witness to the situation for a while, imprinted the incident in her brain and has been shading tears from her eyes which have not dried till date. Feelings of the parents for losing their only child because of attack by the street dogs cannot be measured in terms of money. The Municipal Administration, by handing over Rs.50,000/- to the parents of the deceased child, have washed their hands and are sitting tight without taking any remedial measure, which is very painful. Payment of compensation for the incident occurred on 01.12.2016 is not a matter of showing sympathy or obligation or compassion. Rather, it is to be seen whether the

parents, who have lost their only child, are adequately compensated for the irreparable loss or damages caused to them due to negligence and callous attitude of the Municipal Administration.

10. For just and proper adjudication of the case, it is worthwhile to note that Article 21 mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. Life and personal liberty are inalienable to human existence, and existed even before the advent of the Constitution. Hence, the Constitution cannot be said to be the sole repository of these natural law rights. Enjoyment of a quality life by the people is the essence of the guaranteed right under Article 21 of the Constitution. The protection of the Article extends to all 'person', not merely citizens, including even persons under imprisonment (as regards restrictions imposed in jail).

10.1. Apart from the above, it is also note worthy to refer to the relevant provisions of the Odisha Municipal Act, 1950, which are extracted hereunder:-

“Sec.287-Prohibition against keeping animal so as to be a nuisance or dangerous- No person shall keep any animal on his premises so as to be a nuisance or so as to be dangerous.

Sec.288-Power to destroy stray pigs or dogs-(1) The council may, and, if so directed by the District Magistrate, shall give public notice that unlicensed pigs or dogs straying within specified limits will be destroyed.

(2) When such notice has been give, the Executive Officer may cause to be destroyed in any manner not inconsistent with the terms of the notice any unlicensed pig or dog, as the case may be, found straying within such limits.”

11. May it be noted that basically Article 21 States the Protection of Lives and personal liberty. That means, Article 21 mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law.

12. In **State of Maharashtra V. Chandrabhan**, AIR 1983 SC 803, the apex Court held that Right to Life, enshrined in Article 21 means something more than survival or animal existence.

The same view has also been taken in ***Olga Tellis v. Bombay Corporation***, AIR 1986 SC 180, ***D.T.C. v. Mazdoor Congress Union D.T.C.***, AIR 1991 SC 101, ***Re Noise Pollution (V)***, (2005) 5 SCC 733 and ***Re Noise Pollution (VI)***, (2005) 8 SCC 794.

13. In ***Francis Coralie Mullin v. Union Territory Delhi, Administrator***, AIR 1981 SC 746 : (1981) 1 SCC 608, the apex Court held that the right to life would include the right to live with human dignity.

14. In ***Maneka Gandhi v. Union of India***, AIR 1978 SC 597: 1978 1 SCC 248, the Apex Court held that the right to life would include all those aspects of life which go to make a man's life meaningful, complete and worth living.

15. In ***Chameli Singh v. State of U.P.***, (1996) 2 SCC 549 : AIR 1996 SC 1051, the apex Court held that the Right to Life guaranteed under Article 21 of the Constitution embraces within its sweep not only physical existence but the quality of life. Right to live guaranteed in any civilised society implies the right to

food, water, decent environment, education, medical care and shelter.

16. In **Unni Krishnan, J.P. v. State of Andhra Pradesh**, (1993) 1 SCC 645 : AIR 1993 SC 2178, the apex Court held that several unenumerated rights fall within Article 21, since the expression 'personal liberty' is of the widest amplitude.

17. In **U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Limited**, 1995 Supp (3) SCC 546, the apex Court held that Right to shelter has been held to be a fundamental right which springs from right to residence under Article 19(1)(e) and right to life under Article 21.

18. In **Delhi Jal Board v. National Campaign for Dignity and Rights to Sewerage and Allied Workers**, (2011) 8 SCC 568, the apex Court held that the State and its agencies/instrumentalities or the contractors engaged by them are under a constitutional obligation to ensure the safety of the persons who are asked to undertake hazardous jobs.

19. Therefore, if the provisions contained in Article 21 of the Constitution, as mentioned above, are taken into consideration, right to life with human dignity is the prime consideration and the State should ensure such right of its citizens by providing adequate protection. In absence of the same, it can be inevitably concluded that the State and its instrumentalities have lacked in shouldering their responsibility and utterly failed in due discharge of their duty as enshrined in the Constitution of India.

20. The facts and circumstances available on record lead to an irresistible conclusion that the death of the child was caused due to negligence and, as such, admitting such factum the Puri Municipality has paid compensation of Rs.50,000/- to the parents of the deceased child.

21. In Advanced Law Lexicon of 3rd Edition 2009, 'negligence' has been defined as follows:-

"Negligence" is not an affirmative word, it is a negative word; it is the absence of such care, skill and diligence as it was the duty of the

person to bring to the performance of the work, which he is said not to have performed.”

Negligence may consist as well in not doing the thing which ought not to be done as in doing that which ought not to be done when in either case it has caused loss and damage to another.

Negligence is “the absence of proper care, caution and diligence; of such care, caution and diligence, as under the circumstances reasonable and ordinary prudence would require to be exercised”.

22. In **Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat**, (1994) 4 SCC 1, the apex Court held that negligence in performance of duty is only a step to determine if action of Government resulting in loss or injury to common man should not go uncompensated.

23. In **Poonam Verma v. Ashwin Patel**, (1996) 4 SCC 332, ‘negligence’ has been dealt with by the apex Court in the manner stated herein below:-

“Negligence as a tort is the breach of a duty caused by omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do. The definition involves the following constituents:

- (1) a legal duty to exercise due care;*
- (2) breach of the duty; and*
- (3) consequential damages.”*

24. In **M.S.Grewal v. Deep Chand Sood**, (2001) 8 SCC 151 = 2001 SCC (Cri) 1426, the apex Court in para 14 stated as follows:-

“Negligence in common parlance means and implies “failure to exercise due care, expected of a reasonable prudent person”. It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of the safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do. Though sometimes the word “inadvertence” stands and is used as a synonym to negligence, but in effect negligence represents a state of the mind which, is much more serious in nature than mere inadvertence. There is thus existing a differentiation between the two expressions- whereas inadvertence is a milder form of negligence, “negligence” by itself means and implies a state of mind where there is no regard for duty or the supposed care and attention which one ought to bestow.”

25. In **Jacob Mathew v. State of Punjab**, AIR 2005 SC 3180, the apex Court considering the meaning of “negligence”, held as follows:-

“The jurisprudential concept of negligence defies any precise definition. In current forensic speech, negligence has three meanings. They are : (i) a state of mind, in which it is opposed to intention; (ii) careless conduct; and (iii) the breach of a duty to take care that is imposed by either common or

statute law. All three meanings are applicable in different circumstances but any one of them does not necessarily exclude the other meanings.”

26. In **Malay Kumar Ganguly v. Dr.Sukumar Mukherjee**, (2009) 9 SCC 221= AIR 2010 SC 1162, the apex Court considering the meaning of “negligence”, held as follows:

“Negligence is breach of duty caused by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Negligence means either subjectively a careless state of mind, or objectively careless conduct. It is not an absolute term but is a relative one; it is rather a comparative term. In determining whether negligence exists in a particular case, all the attending and surrounding facts and circumstances have to be taken into account. Negligence is strictly nonfeasance and not malfeasance. It is omission to do what the law requires, or failure to do anything in a manner prescribed by law. It is the act which can be treated as negligence without any proof as to the surrounding circumstances, because it is in violation of statute or ordinance or is contrary to dictates of ordinary prudence.”

27. “Negligence” has also been considered in various judgments of this Court as well as the apex Court. In **Consumer Unity and Trust Society v. Chairman and Managing Director**, (1995) 2 SCC 150, the apex Court has held that “negligence” is absence of

reasonable or prudent care which a reasonable person is expected to observe in a given set of circumstances. But the negligence for which a consumer can claim to be compensated under this sub-section must cause some loss or injury to him. In ***Prafulla Kumar Rout v. State of Orissa***, 1995 Cri LJ 1277, the apex Court has held that negligence is an omission to do something which a reasonable man guided upon these considerations which ordinarily regulates conduct of human affairs would do or the doing of something which a prudent and reasonable man would not do. In ***Ramesh Kumar Nayak v. Union of India***, 1995 ACJ 443, the apex Court, considering the meaning of “negligence”, held that negligence means failure to exercise the required degree of care and caution expected of a prudent driver. In ***Chatra and another v. Imrat Lal and others***, 1998(1) Civ.LJ 670, the apex Court, while defining the meaning of “negligence”, has stated that negligence means the breach of the provisions of law as also the breach of the duty caused by omission to do something which a reasonable man

guided by those considerations which ordinarily regulate the conduct of human affairs, would do or the doing of something which a prudent and reasonable man would not do. The negligence or the rashness would depend upon the facts of each case.

28. In view of meaning attached to 'negligence', as illustrated above, and applying the same to the present case, it is made clear that adequate precautions have not been taken by the Puri Municipality for maintenance of the street dogs. There is no dispute before this Court that the death of the child has been caused due to attack of the street dogs. Thereby, the Municipal Authorities have failed in their due discharge of statutory duties enshrined in the Orissa Municipal Act, 1950. Therefore, the negligence caused by the Municipal Authorities in due discharge of their statutory responsibilities cannot be absolved its liability to pay compensation contending that there is no provision under the Orissa Municipal Act, 1950 to pay compensation. Therefore, in the present facts and

circumstances, the State and its instrumentalities are liable to pay compensation.

29. Under Sections 287 & 288 of the Orissa Municipal Act, 1950, as quoted above, it is specifically provided that no person shall keep any animal on his premises so as to be a nuisance or so as to be dangerous and the council may, and, if so directed by the District Magistrate, shall give public notice that unlicensed pigs or dogs straying within specified limits will be destroyed. When such notice is given, the Executive Officer shall cause destruction of any unlicensed pig or dog, as the case may be, found straying within such limits, in any manner not inconsistent with the terms of the notice.

30. In course of hearing, Mr. P.K. Mohanty, learned Senior Counsel appearing for opposite party no.4-Puri Municipality contended that the death of the child has been occurred due to bites of the street dogs and, as such, compensation can be considered in the light of the judgment of the apex Court in **Sarla Verma**

(Smt.) and others v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, as per the schedule referred to in paragraph-40 of the said judgment. It is contended that since the age of the child falls within the first category, i.e., up to 15 years, the parents of the deceased child are entitled to get compensation of Rs.60,000/- and excluding compensation amount of Rs.50,000/- the balance can be paid by the Municipality Authority.

31. This Court is of the considered view that such mathematical calculation has no application to the present case. Because the Schedule, which has been referred to in the aforesaid judgment, is only meant for the death caused in motor vehicle accident but not in the case where the authorities are negligent of their conduct and not discharging their statutory duty assigned to them.

32 In **Fair v. London and North Western Rly. Co.**, (1869) 21 LT 326, the Court of Queen's Bench held that the necessity that the damages should be full and

adequate. In **Ruston v. National Coal Board**, (1953) 1

All ER 314, Singleton, L.J. said;

“Every member of this court is anxious to do all he can to ensure that the damages are adequate for the injury suffered, so far as there can be compensation for an injury, and to help the parties and others to arrive at a fair and just figure.”

33. In **Phillips v. South Western Railway**

Co., (1874) 4 QBD 406, Field, J. held as follows:

“You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation, once and for all. He has done no wrong; he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered.”

34. In **Livingstone v. Rawyards Coal Co.**, (1880)

5 AC 25, Lord Blackburn has observed as follow:

“Where any injury is to be compensated by damages, in settling the sum of money to be given ... you should as nearly as possible get at that sum of money which will put the person who has been injured...in the same position as he would have been in if he had not sustained the wrong.”

35. In **H. West & Son Ltd. v. Shephard**, 1958-

65 ACJ 504 (HL, England), Lord Morris in his

memorable speech pointed out this aspect in the following words:

“Money may be awarded so that something tangible may be procured to replace something else of like nature which has been destroyed or lost. But the money cannot renew a physical frame that has been battered and shattered. All the Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.”

36. In **Wards v. James**, (1965) 1 AII ER 563, speaking for the Court of Appeal in England, Lord Denning, while dealing with the question of awarding compensation for personal injury, laid down the following three basic principles:-

“Firstly, assessability: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases, otherwise, there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly,

predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good."

37. In **Perry v. Cleaver**, 1969 ACJ 363 (HL, England), **Lord Morris of Borth-y-Gest** said:-

"To compensate in money for pain and for physical consequences is invariably difficult but ... no other process can be devised than that of making a monetary assessment."

38. In **Admiralty Comrs v. S.S. Valeria**, (1922) 2 AC 242, **Viscount Dunedin** has observed thus:

"The true method of expression, I think, is that in calculating damages you are to consider what is the pecuniary consideration which will make good to the sufferer, as far as money can do so, the loss which he has suffered as the natural result of the wrong done to him."

39. In **Basavaraj v. Shekhar**, 1987 ACJ 1022 (Karnataka), a Division Bench of this Court held as follows:

"If the original position cannot be restored-as indeed in personal injury or fatal accident cases it cannot obviously be-the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so 'make good' the damage."

40. In **K. Narasimha Murthy v. Manager, Oriental Insurance Co. Ltd.**, 2004 ACJ 1109

(Karnataka), the Division Bench of the Karnataka High Court in its judgment rendered in an appeal preferred by the claimant under Section 173 of Motor Vehicles Act, 1988 succinctly laid down the legal principles, after extracting the relevant paras from the decisions of the cases in **Admiralty Comrs. V. S.S. Valeria**, (1922) 2 AC 242; **Livingstone v. Rawyards Coal Co.**, (1880) 5 AC 25; **H. West & Son Ltd. V. Shephard**, 1958-65 ACJ 504 (HL, England); **Ward v. James**, (1965) 1 All ER 563; **Basavaraj v. Shekhar**, 1987 ACJ 1022 (Karnataka); **Perry v. Cleaver**, 1969 ACJ 363 (HL, England); **Phgillips v. South Western Railway Co.**, (1874) 4 QBD 406; **Fowler v. Grace**, (1970) 114 Sol Jo 193; and (1969) 3 All ER 1528; and referring to **McGregor on Damages**, 14th Edn. in support of the conclusion for determination of the compensation for personal injury both for pecuniary and non-pecuniary losses in favour of the injured petitioners.

41. In **Houghton Main Colliery Co. Ltd. In Re**, (1956) 3 All ER 300, the apex Court held that the word “compensation” signifies that which is given in

recompense an equivalent rendered-damages, on the other hand, constitute the sum of money claimed, or adjudged to be paid as compensation for loss or injury sustained, the value estimated in money of something lost or withheld. The term “compensation” etymologically suggests the image of balancing one thing against another; as, where there is loss of pension rights, allowance for income-tax respectively payable in respect of pension has to be deducted.

42. In **State of Gujarat v. Shantilal Mangaldas**, AIR 1969 SC 634, the apex court held that the expression “compensation” is not defined in the Constitution. In ordinary parlance, the expression “compensation” means anything given to make things equivalent; a thing given to or to make amends for loss recompense, remuneration or pay, it need not therefore necessarily be in terms of money. The phraseology of the constitutional provision also indicates that compensation need not necessarily be in terms of money, because it expressly provides that the law may specify the principles on which, and the manner in

which, compensation is to be determined and “given”. If it were to be in terms of money along, the expression “paid” would have been more appropriate.

43. In **Lucknow Development Authority v. M.K. Gupta**, AIR 1994 SC 787, the apex Court held that according to dictionary it means, “compensating or being compensated; thing given as recompense”. In legal sense, it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss.

44. In **Kiranabala Dandapat v. Secy. Grid Corporation of Orissa Ltd.** AIR 1998 Ori 159, this Court held as follows:-

“Compensation’ means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay; it need not, therefore, necessarily be in terms of money, because law may specify principles on which and manner in which compensation is to be determined as given. Compensation is an act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damaged may receive equal value for his loss or be made whole in respect of his injury; something given or obtained as equivalent; rendering of equivalent in value or amount an

equivalent given for property taken or for an injury done to another; a recompense in value; a recompense given for a thing received recompense for whole injury suffered, remuneration or satisfaction for injury or damage or every description. The expression 'compensation' is not ordinarily used as an equivalent to 'damage' although compensation may often have to be measured by the same rule as damages in an action for a breach."

45. Therefore, the compensation has to be awarded as per the principle decided above by the apex Court. As such, in **Shobha Ram Rajwa Ram Sahu** (supra), the learned Single Judge of the Chhattisgarh High Court has formulated question in paragraph-7 to the effect as to whether the petitioner therein is entitled to get compensation due to death of his wife for rabid dog bite or not. Paragraphs 8 to 10 of the said judgment read thus:-

*"8. In **Anupam Tripathi v. Union of India and others** (2016) 13 SCC 492 and other connected matters the Supreme Court was considering conflicting issues brought before it by way of several petitions. On the one hand petitions have been filed for direction to the concerned State to control stray dogs; the other raised the issue of indiscriminating killing of stray dogs amounting to cruelty to animals. The Supreme Court referred to the provisions of the Prevention of Cruelty to Animals, Act, 1960 (for short 'the PCA Act') and Animal Birth Control (Dogs) Rules, 2001 (for short 'the Rules,*

2001'). The Supreme Court eventually constituted a committee to maintain complaints regarding injuries sustained by the persons in the dog bite, the nature and gravity of the injury, availability of medicines and the treatment administered to them, the failure of treatment and its cure and in case of unfortunate death, the particulars of the deceased and the reasons behind the same. The Supreme Court observed that on the basis of the report of the committee, subject to adjudication of the responsibility of the State, it would be in a position to think of granting of compensation.

9. In **Shakuntala v. Govt of NCT of Delhi and Anr.**, W.P. (C) No.13771 of 2006 decided on 1-7- 2009 (Reported in AIR 2009 (NOC) 2791 (Del)) the High Court of Delhi was considering death of a roadside Redi/Thela (hand-cart) operator, a fruit vendor, as he was mauled by two fighting bulls. After referring to the provisions contained in Section 298 of the Delhi Municipal Corporation Act, 1957 and Section 202 of the New Delhi Municipal Council Act, 1994 and various decisions of the Supreme Court and other High Courts, it was held by the High Court of Delhi that the respondents are liable to compensate the petitioner in that case as the respondents were either negligent or indifferent towards their statutory duties. The High Court of Delhi awarded a sum of Rs.10.00 lacs towards compensation.

10. In *Sanjay Phophaliya v. State of Rajasthan and Ors.*, AIR 1998 Raj 96 relying on *L.K. Koolwal v. State of Rajasthan and OPrs.*, AIR 1988 Raj 2 it was observed thus:
“it is primary, mandatory and obligatory duty (sic duty) of Municipality to keep city clean and to remove insanitation, nuisance etc. The Municipality cannot take plea whether funds or staff is available or not.”

46. In ***D.K. Basu v. State of WB***, (1997) 1 SCC 416 : (AIR 1997 SC 610), it has been laid down by the Supreme Court that grant of compensation in proceedings under Articles 32 and 226 of the Constitution of India for the established violation of fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a

long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family.

47. In ***Nilabati Behera (Smt.) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) v. State of Orissa and others***, (1993) 2 SCC 746 : (AIR 1993 SC 1960), it was held that the primary source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve new tools to give relief in public law by moulding it according to the situation with a view to preserve and protect the rule of law.

48. In ***Nilabati Behera*** (supra), the Supreme Court quoted the first Hamlyn Lecture in 1949 under the title 'Freedom under the Law' where Lord Denning had said as under:-

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorary, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence... This is not the task for parliament.... The courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country."

49. In the present case, the street dogs attack within the Puri Municipality area can be regulated by the provisions of the Odisha Municipal Act, 1950. As such, the cleanliness of the town and maintenance of the stray dogs and pigs are the statutory responsibility of the Municipal Authorities. In the judgment rendered by the Chhattisgarh High Court in **Shobha Ram Rajwa Ram Sahu** (supra), a reference has been made to the judgment and order dated 22.08.2017 of the said High Court passed in W.P. PIL No.24 of 2017

(Regarding death of Kumari Divya Verma, D/o-Shri Ashok Verma due to Rabies v. State of Chhattisgarh and another), reported in ILR 2017 Chh 1042, wherein while entertaining the suo motu PIL, the High Court of Chhattisgarh awarded compensation of Rs.10,00,000/- to the mother of the deceased, who died on account of attack by street dog.

50. Similarly, in **Yusub** (supra), wherein the petitioner sought for compensation of Rs.25,00,000/- on account of death of his son Master Abbasali Yusub Sanadi, the Karnataka High Court, referring to the judgments of the various High Courts and taking note of **Nilabati Behera (Smt.) alias Lalita Behera** (supra), directed to make payment of Rs.10,00,000/- as compensation to the petitioner along with interest @ 6% per annum calculated from 29.11.2018, being the date of death of the minor son, within a period of four weeks from the date of receipt of a copy of the order.

51. Taking into consideration the aforementioned judgments and applying the same to the present case,

this Court is of the considered view that the father of the deceased child is entitled to get compensation of Rs.10,00,000/- (Rupees Ten Lakhs) due to death caused by the street dogs bite. Accordingly, this Court directs opposite party no.4 to pay Rs.10,00,000/- (Rupees Ten Lakhs) as compensation to the father of the deceased within a period of four weeks from the date of receipt of the copy of this judgment, failing which the amount will carry interest @ 6% per annum from the date of passing of the judgment till such payment is made.

52. In the result, therefore, the writ petition is allowed, but, however, there shall be no order as to costs.

(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

M.S. RAMAN, J. I agree.

(M.S. RAMAN)
JUDGE