

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CFA No. 60/2014

Reserved on 26.12.2023.

Pronounced on 28.12.2023.

1 UOI Th. Secretary Ministry of Defence
New Delhi. 2. Commanding Officer 45-
RR care of 56 APO

..... appellant (s)

Through :- Mr. R.S.Jamwal CGSC.

V/s

Muzaffar Hussain Shah son of Khadam
Hussain Shah r/o Sanai, Surankote, Poonch.

.....Respondent(s)

Through :- Mr. Mumtaz Choudhary Advocate.

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1 Present appeal has been filed against the judgment dated 06.08.2014 passed by the District Judge, Poonch ('trial Court' for short) in File No. 11/Civil accepting the suit of the plaintiff-respondent herein and passing a decree for payment of Rs.5,28,000/- with interest @ 7.5% per annum from the date of institution of the suit.

Factual matrix:

2. On 25.11.2004 at about 8.30 pm, the army personnel of 45 RR after ambushing the house of the plaintiff-respondent herein (hereinafter referred to as the 'plaintiff') situated at village Sanai Tehsil Sunrakote asked him to come out from his house. As soon as the plaintiff opened the door, the Army personnel resorted to indiscriminate firing upon him, as a result of which, the plaintiff received injuries on his right arm. After the occurrence, the army took him in the army hospital and thereafter the plaintiff was referred to GMC

Jammu where he remained admitted for treatment. Due to the act of the army personnel, the plaintiff has become completely handicapped with permanent disablement of his arm and, therefore, could not earn his livelihood. The Deputy Commissioner, Poonch had granted him an ex-gratia relief of Rs.75000/-. Since the amount granted by the Deputy Commissioner was very meager and the same has been spent by the plaintiff on his treatment, he served a legal notice upon the appellants herein for making payment but all in vain which constrained the plaintiff to file a suit for recovery of Rs.10.00 lac as compensation on account of his disablement due to bullet injuries of the Army.

3 The appellants appeared before the trial Court and resisted the claim of the plaintiff on the ground that due to the firing of militants the plaintiff was injured, as such, there was no negligence on the part of the appellants herein and, therefore, the appellants are not liable to make any payment of compensation to the plaintiff.

4. The trial Court, has after perusing the evidence and hearing the parties, framed following issues:

(i) Whether due to the indiscriminate firing of the Army during the night of 25.11.2007 the plaintiff was seriously injured when he on the direction of the army came out from his house at Sanai ? OPP

(ii) In case issue No.1 is proved in negative, whether the plaintiff was injured due to the indiscriminate firing of the militants when they came out from the house of the plaintiff on being challenged by the army? OPD

(iii) Whether the plaintiff has already received an ex-gratia relief of Rs.75000/- from the State if so what is its effect on the suit ?OPP

(iv) In case issue No.1 is proved in affirmative whether the plaintiff is entitled to compensation if so from whom and to what extent ? OPP

5 The present case entirely depends upon issue No.1. So far as issue No.1 is concerned, the trial Court has held that the appellants herein had failed to produce any witness in support of their contention, whereas the plaintiff/respondent herein has established the fact that he was injured due to the firing of the army when he opened the door at the call of the army officials. In this way, the issue No.1 was decided in favour of the plaintiff and against the appellants. In view of the findings recorded by the trial Court on issue No.1, other issues were also decided against the appellants herein. The trial Court, in view of the findings recorded on all the issues, vide judgment impugned, found the plaintiff entitled to compensation. It is this judgment the Trial Court which is under challenge in this appeal.

6 The impugned judgment has been challenged by the appellants on the ground that the appellants are not liable to pay the amount as they have not committed any negligence. It is submitted that by accepting Rs.75000 as compensation from the Deputy Commissioner on account of injury received by the plaintiff, he is not entitled to claim compensation on account of any negligence on the part of the army and, therefore, he is estopped to raise such a plea.

7 On the other hand, learned counsel for the plaintiff/respondent herein has submitted that the trial Court has not committed any mistake either on facts or on law in arriving at a conclusion with regard to compensation granted to the plaintiff/respondent herein. It is submitted by learned counsel for the plaintiff that the plaintiff has proved his case before the trial Court and, therefore, the appeal deserves to be dismissed. Learned counsel for the plaintiff in support of his case has relied upon judgments of the Supreme Court rendered in cases titled **Helen C. Rebello and others vs. Maharashtra State**

Road Transport and another (1999) 1 SCC 190 and Sarla Verma and others vs. Delhi Transport Corporation and another (2009) 6 SCC 121.

8 Heard learned counsel for the parties and perused the material on record.

9 The appellants have raised a two fold plea before this Court. Firstly, that onus was on the plaintiff/respondent to prove that he got injured due to the bullet fired by the appellants and secondly, that the appellants have already granted ex-gratia relief in favour of the plaintiff/respondent for the injury suffered by him.

10 It is noticed that all the witnesses produced by the plaintiff before the trial Court have supported the contention of the plaintiff that due to the indiscriminate firing of the army during the night of 25.11.2007, the plaintiff was seriously injured. On the other hand, the appellants have not denied the indiscriminate firing upon the plaintiff when he opened the door but their plea was that they fired in retaliation of the firing by the militants. They have further stated that it was due to the firing of the militants the plaintiff received injuries. The appellants chosen not to produce any witness in support of their contention whereas the plaintiff has established the fact that he got injured due to the firing of the army when he opened the door at the call of the army officials. It has been proved that due to the indiscriminate firing of the army, the plaintiff received serious injuries. Therefore, the plea of the appellants that no cogent evidence has been led by the plaintiff to prove that the bullet which struck him was fired by the 45 RR troops is unacceptable.

11. The other ground raised by learned counsel for the appellant is that by accepting Rs.75000/- as compensation from Deputy Commissioner

Poonch on account of injury received in militants operation, the plaintiff is not legally entitled to claim compensation on account of any negligence of army personnel and, therefore, is estopped to raise such a plea for obtaining compensation. An ex gratia payment is a voluntary payment made by an organization, government, or other entity to an individual or group of individuals. It is a gesture of goodwill by the Government/organization to compensate any loss or hardship faced by an individual in terms of the rules applicable. There is difference between ex gratia and compensation. In law, ex-gratia payment is a payment made without the giver recognizing any liability or legal obligation. If, for any reason, the legal representatives of the deceased or injured, or those, who lost their belongings, as the case may be, are not satisfied with the payment of ex gratia, it is always open to them to approach the appropriate forum for compensation, by adducing evidence. Therefore, there is no substance in the plea of the appellants that the plaintiff/respondent herein is not entitled to any compensation.

12 Thus, keeping in view the nature of injuries, the trial Court has rightly awarded compensation in favour of the plaintiff/respondent herein. The compensation awarded by learned trial Court in the present case, is just, fair and equitable. Therefore, I do not find any infirmity in the impugned judgment. Under these circumstances, the appeal is dismissed.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Jammu
28.12.2023
Sanjeev

Whether order is reportable: Yes/No