

In the High Court of Punjab and Haryana at Chandigarh

FAO- 5281 of 2015(O&M)

Date of Decision:19.2.2018

Swaranjit Kaur and others

---Appellants

vs.

Union of India and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Pawan K.Sharma, Advocate
for the appellants

Mr. P.K.Longia, Advocate
for the respondents

Mr. Vipul Sharma, Advocate
Amicus Curiae

Rekha Mittal, J.

The present appeal directs challenge against award dated 12.5.2014 passed by the Motor Accidents Claims Tribunal, Panchkula (in short “the Tribunal”) whereby petition under Section 166 of the Motor Vehicles Act, 1988 (in short “the Act”) for grant of compensation on account of death of Sepoy Balbir Singh in a motor vehicular accident that took place on 9.3.1996, has been dismissed.

In short, case of the claimants is that on 9.2.1996, Balbir Singh Sepoy in the Army was driving vehicle No. BA No. 87-D 68387-N

(Shaktiman) from Srinagar to Jammu. When he reached near Neogaon, front tyre of driver side of the vehicle got burst. Resultantly, vehicle went out of control. The deceased tried to save lives of passengers and hit against hill side. The door of driver side got broken, deceased lost control and fell down due to jerk, engine of the vehicle got off and deceased was stuck between the diesel tank and the hill. As the vehicle was loaded, the passengers could not move the vehicle immediately to rescue the deceased. The deceased suffered fracture ribs 6, 7, 8, 9th (Rt.) fracture pelvis, contusion and haematoma of soft tissues-iliac fossa and pelvis, multiple abrasions, haematoma Rt. Lower chest wall.

Respondent Nos. 1 to 3 filed reply raising preliminary objections inter alia non-maintainability of the petition and there being no cause of action to claim compensation. They have controverted allegations raised in the petition and their liability to pay compensation.

The controversy between the parties led to framing of following issues by the Tribunal:-

1. Whether Balbir Singh had died on account of injuries suffered in the accident in question which took place due to bursting of tyre of truck Shaktiman BA No. 87-D 68387-N (on which the deceased was driver at the relevant time), as alleged? OPP
2. If issue No. 1 is proved, whether the claimants are entitled to compensation, if so to what amount and from whom? OPP
3. Relief.

The parties were directed to adduce evidence in support of

their respective contentions. Swaranjit Kaur claimant No. 1 and Jagir Singh claimant No. 4 appeared in the witness box. They tendered into evidence copy of enquiry report Ex. P1, copy of post mortem report Ex. P2 and copies of letters written by Army Authorities to the claimants Exs. P-3 to P-6. However, the respondents did not adduce any evidence in rebuttal.

After having heard counsel for the parties in the light of materials on record, the learned Tribunal answered issue No. 1 against the claimants while dealing with issues No. 1 and 2 jointly and consequently, the petition was dismissed. However, the Tribunal granted Rs. 50,000/- payable with interest under 'no fault liability'.

Counsel for the claimants/appellants has submitted that with regard to death of Balbir Singh, a Court of Enquiry was conducted and report Ex. P-1 was submitted attributing death of Balbir Singh to military service in field area. It has been argued with vehemence that the learned Tribunal seriously erred by ignoring the enquiry report and negating plea of the claimants that the accident took place due to negligence on the part of respondents who failed to ensure roadworthiness of the vehicle in question before it was given to Balbir Singh for driving from Srinagar to Jammu. It is further argued that findings recorded by the Tribunal on issue No. 1 may be set aside and the claimants be awarded compensation to make good the loss as the money can do for the untimely death of Balbir Singh who was husband of claimant No. 1 and son of claimant No. 4.

Counsel representing the respondents has supported findings of the Tribunal on issue No. 1 with the submission that the claimants failed to adduce satisfactory much less cogent and convincing evidence that accident

was the result of rashness or/and negligence attributable to the respondents. According to counsel, there is not even a whisper by the claimants in para 24 of the petition that the occurrence in question took place due to negligence attributable to the respondent authorities. It has further been urged that the fact of application for compensation being filed after a gap of about 16 years since the occurrence that took place on 9.2.1996 itself speaks hollowness of claim of the claimants even if there is no limitation provided in law for filing an application for compensation. According to counsel, as the claimants filed the petition after 16 years, respondents were rendered handicapped to produce relevant records to counter plea of the claimants.

As has been noticed hereinbefore, Swaranjit Kaur widow and Jagir Singh father of deceased Balbir Singh appeared in the witness box to prove their claim for compensation. They were not present at the place of occurrence nor could depose as to how any negligence for unfortunate occurrence can be attributed to the respondents. As a matter of fact, testimony of Swaranjit Kaur and Jagir Singh is of no assistance for the claimants to make out a case that front tyre of the vehicle in question got burst due to some lapse much less negligence on the part of Army Authorities.

Much stress has been laid upon the enquiry report prepared by the Court of Enquiry. The learned Tribunal in para 17 has held, quoted thus:-

“.....the accident has taken place on 9.2.1996, but the petition has been filed on 17.3.2012 i.e. after a gap of 15 years.

The only evidence is copy of enquiry report Ex. P1 and from the perusal of the same, it transpires that after the accident, Court of Enquiry was ordered by the Army authorities which consisted Major Tej Singh as Presiding Officer and Captain Parvathesam and Major B. Chakravarty as Members. In the enquiry, one witness namely Naib Subedar Balwant Singh and another witness namely Havildar Birender Singh who were sitting in the vehicle in question were examined and thereafter, opinion of Court of Enquiry was submitted which has been placed on file. Death of deceased caused in the road accident while on duty on “OP Rakshak” has been attributed to military services but complete enquiry file has not been placed on record. It is of common knowledge that in the motor park of the Army, the vehicles are being maintained by the Incharge of the motor park and whenever any vehicle goes out of the motor park, road worthiness of the same is inspected and verified by the Incharge of the motor park.”

None of the witnesses examined before the Court of Enquiry appeared before the Tribunal to support cause of the claimants. Their testimonies recorded before the Court of Enquiry cannot form the basis for recording a finding that accident occurred due to negligence attributable to the Army authorities. Counsel for the appellants has not disputed factual findings that the enquiry file is not complete. This apart, perusal of opinion of the Court of Enquiry, available at page 175 of the records, only indicates that there is no foul play involved in the case. Since the accident had

occurred while on “OP Rakshak” the death is attributable to military services in field area. Opinion of the Court of Enquiry nowhere records a finding that the vehicle in question was not checked for its roadworthiness before it was taken out of the premises of the Military authorities or the occurrence is the result of negligence attributable to the respondents or a particular section of Army authorities responsible for maintenance and ensuring roadworthiness of the vehicles.

No doubt, there is no limitation prescribed in law for filing an application for compensation, however, there is no explanation by the claimants as to why they remained silent for 16 years if the accident had occurred due to negligence attributable to the respondents. The very fact that claimants knocked at the door of the Tribunal after lapse of 16 years deprived the respondents to produce relevant documentary evidence. Analyzed from any angle, claimants have failed to establish that accident was the result of negligence attributable to the Army authorities. In this view of the matter, I find it difficult to differ with findings recorded by the Tribunal determining issue No. 1 against the appellants.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs. As the appeal has been decided on merits, application for condonation of delay in filing the appeal is of academic relevance only.

(Rekha Mittal)
Judge

19.2.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No