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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 3146/2019

JITENDER SINGH .....Petitioner

Through: Mr.Sandeep Garausa with Mr.Ajay Kumar, Advocates.

Versus

THE DIRECTOR GENERAL BORDER SECURITY FORCE BSF HEAD QUARTER & ORS .....Respondents

Through: Mr.Mahender Kumar Bhardwaj, Advocate for R-1,3 & 4.
Mr.Sanjay Rawat, Advocate for R-5.
Mr.Ravinder Singh, Advocate for State of WB.

Reserved on : 06th April, 2021

% Date of Decision: 08th April, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

JUDGMENT

MANMOHAN, J:

1. Present writ petition has been filed seeking a direction to the respondents to pay to the petitioner insurance compensation of Rs. 10 lakhs along with interest @ 12% per annum from the date of accident of the petitioner, till its realisation.

2. The relevant facts of the present case are that on 11th May, 2008 at about 1740 hours while carrying out vehicle patrolling by the troops of

'C' Coy of Ex-39 Bn BSF, deployed under NB-II Bn BSF, Commanded by Shri N.K. Singh, Comdt., in connection with Panchayat Election duty West Bengal (WB) in general area of Village Ganga Manna, PS Bandwan, Distt.-Purulia (WB), the Tata-407 vehicle carrying the troops was blown due to a powerful Improvised Explosive Device (IED) blast activated by extremists in which Constable Ali Akbar Sheikh of 39 Bn BSF sacrificed his life on the spot, Constable B Ramayanyulu succumbed to his injuries on 15th May, 2008 at 2230 hrs, while under treatment at ICU, Steel Authority of India Hospital, Bokaro and six other individuals of 39 Bn BSF, including the petitioner, sustained serious injuries.

3. Learned counsel for the petitioner stated that compensation of amount of Rs. 10 lakhs each had been paid by the Insurance Company to the next of kin of both deceased BSF personnel, namely, late Constable Akbar Seikh and late B Ramayanyulu, but the other BSF personnel including the petitioner who were injured in the IED blast were not paid any claim/compensation by the Insurance Company for the injury/ disability sustained by them.

4. He further stated that though the petitioner was declared unfit for further service in BSF due to loss of two fingers in the hand and his disability was assessed at 59%, yet the respondent-Insurance Company did not pay any compensation. He, however, clarified that the petitioner had been paid SPBY disability compensation amounting to Rs. 2,95,000/- and disability pension of Rs. 11,940/- per month to be revised from time to time.

5. Learned counsel for the BSF stated that BSF had approached West Bengal Police authorities on a number of occasions for obtaining the

Insurance claim from the Insurance Company for the injury/disability sustained by the BSF personnel due to IED blast during the Panchayat elections. He, however, stated that neither any reply nor any payment had been received from the National Insurance Company, Kolkata.

6. Learned counsel for the National Insurance Company, with utmost respect to the petitioner, stated that going by the Medical Board Report relied upon by the petitioner which describes the disability suffered by the petitioner as 59%, the same did not fall within the definition of 'Permanent Total Disability' (PTD) within the contemplation of the subject policy and hence no compensation is payable to the claimant in terms of the GPA policy.

7. Having heard learned counsel for the parties and having perused the paper book, this Court finds that the Director General, West Bengal Police had taken a 'tailor made' Group Personal Accident Policy' for coverage of its personnel deployed in extremist affected areas of West Bengal from National Insurance Company Limited from time to time. The premium and the extent of coverage under these policies were negotiated and the clarifications with respect to various aspects, respective rights and obligations, emanating from the said GPA Policy had formed the basis of the terms agreed between the parties.

8. The National Insurance Company vide letter dated 31st August, 2004 had defined Permanent Total Disability "*if such injury shall as a direct consequence thereof immediately permanently totally and absolutely disable the Insured Persons from engaging in being occupied with or giving attention to any description*".

9. Vide another letter dated 04th March, 2005, the Insurance Company Limited had clarified that Permanent Total Disability would mean:

i. Loss of two limbs, two eyes or one limb and one eye 100% of (S.I).

ii. Loss of one limb or one eye 50% of (S.I)

iii. Permanent Total Disablement from injuries other than those named above (certified by doctor) 100% of (S.I).

10. One such Group Personal Accident Policy (No-100701420782000000128) valid for the period 16th October, 2007 to 15th October, 2008 was taken for 2520 personnel from the rank of Inspector General to Constable rank including those of Central Para Military Forces in three specified Districts of West Midnapore, Bankura and Purulia. The coverage under the subject policy was only in respect of accidents involving Land Mine Explosive attacks and was subject to a number of stipulations and terms and conditions contained therein including the following condition:-

> *"(c) If such injury shall within twelve (12) calendar months of its occurrence be the sole and direct cause of the total and irrecoverable loss of*
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> *i. The sight of one eye or of the actual loss by physical separation of one entire hand or one entire foot, fifty percent (50%) of the capital sum insured stated in the Schedule hereto.*
>
> *ii. Total and irrecoverable loss of use of a hand or a foot without physical separation, fifty percent (50%) of the capital sum insured stated in the Schedule hereto."*

11. This Court finds that the petitioner was retired from service w.e.f. 31st July, 2009 (AN) on the ground of physical unfitness as the Medical Board constituted at BSF Composite Hospital Kadamtala on 09th February, 2009 had found that the petitioner had suffered injury in left hand palm with fracture phalanx left thumb, middle phalanx of index finger, distal phalanx of middle finger. Petitioner's disability was assessed at 59% and he was declared unfit for further service in the Force.

12. Consequently, this Court is of the opinion that the petitioner's injury in the IED blast was the sole and direct cause of total and irrevocable loss of functionality of a hand or loss of one limb i.e. resulting in his permanent disability and loss of occupation.

13. Accordingly, this Court is of the view that the petitioner is entitled to 50% of the capital sum insured under the Insurance Policy No-100701420782000000128.

14. The respondent No. 5 (National Insurance Company) is directed to pay the said amount within four weeks to respondent No. 1 who in turn is directed to release the said amount within two weeks to petitioner. With the aforesaid direction, the present writ petition stands partly allowed with no order as to costs.

MANMOHAN, J

ASHA MENON, J

APRIL 08th 2021
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