



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.21508 of 2023
Date of Decision: 22.05.2025**

Kaushalya Devi

...Petitioner

Versus

Union of India and others

...Respondents

**CORAM: *HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA*
*HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Lt. Col. Vijay Kumar Padwal, Advocate
for the petitioner.

None for respondents No.1 to 4.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The writ-petition filed before this Court assails the order passed by the Armed Forces Tribunal (AFT) dated 09.08.2023, whereby application moved by the petitioner has been dismissed.

2. Brief case which has been said by the petitioner is that she is the mother of Late Rifleman Amit Sharma who unfortunately expired while on active duty in OP Rakshak on 22.02.2012. The Rifleman was awarded Posthumously Sena Medal. The claim of the petitioner as a mother is that the retiral benefits which accrue on account of the untimely death of the soldier, should be shared between her and the wife of the deceased. The AFT examined the claim of the petitioner and found that the deceased son had executed a Will in favour of his wife. The petitioner-mother was being paid 1/3rd of the share of liberalised family pension and that apart, she has also been paid Rs.2.5 lac from the Army Group Insurance Fund. So far as her



claim for remaining retiral benefits is concerned, the same was rejected by the AFT taking note of the fact that before filing the claim before the AFT, the petitioner had filed a Civil Suit against the widow. The Civil Suit had been decreed in favour of the wife of the deceased and thereafter, the petitioner-applicant filed the application on the premise that the Civil Court had no jurisdiction to decide the issue. She has also challenged the validity of the Will. The AFT also noticed that the Civil Suit was filed on 20.08.2018 and although, after coming into force of the Act, the jurisdiction was not available with the Civil Court but since the petitioner had herself chosen the said forum, it cannot be said that she had not accepted the jurisdiction of the Civil Court. While dismissing the OA, the AFT upheld the action of the Armed Forces as the son of the petitioner had executed a Will in favour of his wife, validity of which cannot be challenged before the Tribunal.

3. We have considered the submissions. We find that the claim for 1/3rd of all the pensionary benefits namely AGIF, Death-cum-Gratuity, Leave Encashment, Ex-gratia amount that being family pension and other benefits cannot be shared to the extent of 1/3rd with the petitioner as the son had executed a Will in favour of his wife. We also noticed that the widow has also a daughter who is to be taken care of. So far as the petitioner-mother is concerned, her husband would be the person who would be taking care of her and she would be primarily dependent upon her husband while he is alive and not on her deceased son.

4. Hon'ble the Supreme Court in *Sadhana Tomar & Ors. vs. Ashok Kushwaha & Ors.*, 2025 Livelaw (SC) 309, recently held as under:-

“13. This Court has clarified in the case of Meena Devi v. Nunu Chand Mahto [(2023) 1 SCC 204], that the objective of granting compensation under the Motor



*Vehicles Act, 1988, is to ensure that just and fair compensation is paid to the aggrieved party. Another question which arose for our consideration, as for the purpose of loss of dependency, the deduction of annual income should be 1/3rd or 1/4th, as there are five claimants. The Tribunal did not consider appellant Nos.4 and 5, namely, the father and the younger sister, respectively, of the deceased as dependents, stating therein that the father was not dependent on the income of the deceased and since the father is alive, the younger sister is also not dependent on the income of the deceased. This Court in **Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234]**, observed that a legal representative is one, who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent or child.”*

5. In view thereto, the present petition is only misconceived and is, accordingly, dismissed.
6. Pending miscellaneous application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

22.05.2025
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No