
(2000) 10 P&H CK 0113
In the Punjab And Haryana At Chandigarh
Case No : FAO 1016 of 1985

Gurbachan Kaur

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-10-2000

Acts Referred:

Citation : (2002) 1 ACC 666 : (2002) ACJ 666 : (2001) 1 RCR(Civil) 307

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. K.S. Sidhu, for the Appellant; Mr. A. Mohunta, for the Respondent

Judgement

R.L. Anand,J.—By this order, I dispose of two F.A.O. Nos. 1016 (Gurbachan Kaur v. Union of India and others) and 1017 (Chint Kaur and another v. Union of India and others), both of 1985 as both the appeals have arisen from the award dated 18.5.1985 and common questions of law and facts are involved. One claim petition has been filed on behalf of Gurbachan Kaur widow of Santokh Singh, deceased and the other has been filed by Chint Kaur, mother, and Mohinder Kaur, widow, of Balbir Singh, deceased.

2. The facts, as stated below, have been taken from FAO No. 1016 of 1985.

3. The brief facts of the case are that on 27.8.1992 at about 10.14 a.m., Balbir Singh, deceased, resident of Village Bakho Pir, Police Station Bhiwanigarh, was driving his motor cycle No. UIS 2966 with Santokh Singh, resident of Karnal riding on its pillion. They reached on the bridge of the sullage drain on the Circular Road, Nabha. and the motor cycle was proceeding on the left hand side of the road when a military lorry No. 3 Tonnes 4x4 TMV 74-D-14531 x 6006-Indian Workshop EME, driven by respondent No. 2 with respondent No. 3 sitting by his side, came from the opposite direction at a high speed without following any traffic rules. The military lorry was being driven rashly and negligently so as to endanger human life and respondent No. 2 brought the military lorry to the wrong side and rammed the same against the motor cycle as a result of which

both Balbir Singh, driver of motorcycle and Santokh Singh, the pillion rider, received multiple injuries and the motor cycle was completely damaged. Respondents No. 2 and 3 ran away from the spot. The occurrence was witnessed by Bhajan Singh and Lachhman Dass. Balbir Singh was aged about 28 years at the time of his death. Chint Kaur, mother, and Mo-hinder Kaur, widow, of Balbir Singh, filed a claim petition for the award of Rs. 2 lacs by way of compensation on the plea that the accident was caused by due to rash and negligent driving of the military lorry by respondent No. 2.

4. Notice of the claim petition was given to the respondents who filed the reply and denied the allegations. They put the whole blame on Balbir Singh, driver of the motor cycle and as per the stand of the respondents, Balbir Singh was driving the motor cycle in a rash and negligent manner and he wanted to overtake a civilian truck and rammed into the right front of the military lorry.

5. The Tribunal framed the following issues in order to dispose of the claim petition :-

"1. Whether Balbir Singh deceased was killed in motor vehicle accident on 27.8.82 due to the rash and negligent driving of lorry three Tonnes 4x4 TMB 74-D1431x6006 INDEEP Workshop EME c/o 56 APO by respondent No. 2 Sepoy Sarwan Ku-mar ? OPA

2. If issue No. 1 is proved to what amount of compensation, if any, are the applicants entitled and from whom ? OPA

3. Relief."

6. Subsequently, the following additional issue arising from the pleadings of the parties was also framed :-

"2 A. Whether respondent No. 2 the driver of the military lorry was acting in the exercise of the sovereign function of the Union Government at the time of the accident and if so whether the Government of India is not liable for his negligence ? OPR"

7. The parties led evidence in support of their case and on the conclusion of the proceedings, issue No. 1 was decided in favour of the claimants. However, it is remarked by the Tribunal that the finding on issue No. 1 shall be subject to the decision on issue No. 2A. Issue No. 2 was also decided in favour of the claimants. In the claim petition of Chint Kaur and Mohinder Kaur, the Tribunal awarded a sum of Rs. 43,200/- Out of this amount, a sum of Rs. 7,200/- was awarded to Chint Kaur, mother of Balbir Singh, and the remaining amount was awarded to Mohinder Kaur. widow of Balbir Singh. A sum of Rs. 67,200/- was awarded to Gurbachan Kaur. widow of Santokh Singh. However, issue No. 2A was decided against the claimants by holding that the lorry was on sovereign duty of the Govt. of India and it was being driven by its driver-respondent No.. 2 and, therefore, the claimants are not entitled to any relief. Issue No. 2-A was decided in favour of the respondents and against the claimants, for the reasons given in

para-13 of the award of the Tribunal, which reads as under :-

"13. The case that was set up by the respondents in the written replies separately filed in the two claim applications was that the army lorry was returning to Field Post Office after collecting the Mail from the Railway Station and the accident took place during the course of the discharge of the official duty of the Driver which was a sovereign function and as such the applicants were not entitled to claim any compensation. From the statement of Sepoy Ram Sarup Sharma RW-t, it is made out that on that day he had gone with the lorry from his Unit to the Field Post Office and from there he took an official namely Sarwan Kumar with him to the Railway Station Nabha and they both were returning from the railway station in the lorry in question after having collected the Mail. According to Sepoy Ram Sarup Sharma the movements of the army vehicles are recorded in the Car Diary that is maintained in the discharge of the official duty and he produced the Photostat Copy Ex. R1 of the entry made in the Car Diary relating to the military lorry in question dated 27.8.1982. The perusal of Ex. R1 shows that respondent No. 3 was deputed to collect the Mail of the Army from the Railway Station. The question that crops up for consideration is as to whether Union of India would be liable for the tortuous act of the respondent-driver when he was driving the vehicle in the exercise of sovereign powers/delegated sovereign powers or not. The contention of Sh. K.S.Nagra, the learned counsel for the claimants in the two claim applications was that the military lorry was not being driven in discharge of the sovereign functions of the State and as such both respondent No. 3 and the Union of India would be jointly and severally liable to pay the compensation. In this connection he has placed reliance on the observations made in *Nandram Heeralal v. Union of India*, AIR 1978 Madhya Pradesh, 209 (D.B.), where it was observed that it cannot be disputed that the act of driving the vehicle in bringing back the officers from the place of exercise to the College of Combat is not an act which cannot be lawfully exercised except by a sovereign or a person by virtue of delegation of sovereign rights. There is no dispute with the proposition of law laid down in the D.B. decision. Another authority cited was that of a decision of Rajasthan High Court, wherein a truck driver engaged in the famine relief work was involved in an accident and it was held that the same did not absolve the liability of the State for the negligence of its driver. The famine relief work is not a sovereign function of the State as it has been traditionally understood. It is a work which can be and is being undertaken by private individuals. There is nothing peculiar about it so that it might be predicated that the State alone can legitimately undertake the work. This authority, therefore, does not help the claimants inasmuch as the Mail of the Army could not have been collected by any private vehicle or a person who was not serving in the Army like respondent No. 3. My attention was also drawn to the observations made in *Union of India and another v. Miss Sabita Sharma* AIR 1979 J & K 6 (DB) which was a case where the Driver of the military truck was driving the motor vehicle in question to Railway Station to bring the Jawans to the Unit Headquarters. And it was held that it could not be said that the statutory

duty the driver was performing was referable to the exercise of the delegated sovereign powers. The Jawans could have been transported to the unit headquarters in a private bus or a truck or in any other vehicle. I, therefore, need not carry further. The conclusion at which I have arrived at is that the military lorry was being driven in the discharge of the sovereign function of the Union of India. This conclusion is fortified by the observations made in *Baxi Amrik Singh v. Union of India* 1973 PLR 1, a judgment of five Hon"ble Judges of our own High Court and the observations made in *Shakontla Devi Vs. Union of India (UOI)*, another decision of our own High Court, I, therefore, decide this issue in favour of the respondents and as against the two set of claimants. But for the findings on this issue, the claimants in the main application and the connected application would have been emitted recover the amount of compensation referred to above with interest at the rate of 12% per annum from the date of the application till the date of the deposit."

8. Aggrieved by the award of the Tribunal, the present two appeals.

9. I have heard the counsel for the parties and with their assistance have gone through the record of this case.

10. Counsel for the appellants submitted that the Tribunal has relied upon a judgment reported as *Baxi Amrik Singh v. Union of India* 1973 PLR 1 but this judgment has already been set aside by the Supreme Court in *Pushpa Thakur v. Union of India* and another 1984 ACJ 559, in which it was observed that the plea of sovereign immunity is not open to the Union of India. The plea that the driver was on sovereign duty is not open to the Govt. vis-a-vis its citizens especially in a welfare State. In *Usha Aggarwal and others v. Union of India and others* 1985 ACJ 834, it was observed by this Court in para-5 of the judgment as under :-

"We are of the view that on the facts and circumstances of the case the principle of sovereign immunity of the State for the acts of its servants has no application and the High Court was in error in rejecting the claim of the appellant for compensation on that ground."

11. In this view of the matter, the findings of the Tribunal on issue No. 2A are hereby reversed and issue No. 2 A is decided against the respondents and in favour of the appellants. Accordingly, both the appeals are hereby allowed and it is directed to the respondents to pay the compensation as awarded by the Tribunal to the claimants within three months from today. Of course, the claimants will also be entitled to interest @ 12% from the date of filing of the claim petition till payment. No costs.

12. Appeal a allowed.