
(1976) 01 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 177 of 1968

Shakontla Devi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-01-1976

Acts Referred:

Citation : (1976) ACJ 97

Hon'ble Judges : Muni Lal Verma, J

Bench : Single Bench

Advocate : K.N. Tewari, for the Appellant; J.S. Wasu and S.K. Sayal, for the Respondent

Final Decision : Dismissed

Judgement

Muni Lal Verma, J.—This appeal has arisen out of the claim laid by the Appellant for compensation on account of the death of her husband?Nand Lal, before the Motor Accidents Claims Tribunal, Punjab, at Chandigarh (hereinafter called the Tribunal) in the circumstances, briefly stated, as under:

2. Nand Lal was employed as a Police Constable. In the month of July 1967, he along with other Constables was posted at Mehmadpur Barrier Check Post on the G.T. Road near river Ghaggar (hereinafter called the barrier) on the border of the states of Haryana and Punjab. The barrier had been erected by placing empty Coaltar drums (hereinafter called the drums) for regulating the traffic. On July 14, 1967 at about 8.30 p.m., Nand Lal along with Bhagwan Dass who was posted as Sub Inspector Food and Civil Supplies, was sitting in chairs on Kacha portion near the barrier, Military Truck No. S.D. 29100 (hereinafter referred to as the truck) appeared at the barrier from the side of Ambala Cantt. He was proceeding towards Patiala, and was driven by Kartar Singh Sepoy of Battalion No. 501 ASC. The truck struck against one of the drums as a result of which it went off the road and ran over Nand Lal and Bhagwan Dass and stopped in the pits lying by the side of the G. T. Road. Nand Lal died at the spot due to the injuries sustained by him while Bhagwan Dass expired later in Civil Hospital, Rajpura. Therefore,

the Appellant who is widow of Nand Lal, made an application to the Tribunal claiming Rs. 1,02,981.00 Paise, most probably for herself and on behalf of four minor children who were two sons and two daughters, from the Respondent. Her allegations, though not express, were that Kartar Singh had driven the truck in the course of his employment under the Respondent and the accident which resulted in the death of Nand Lal, had occurred due to negligent driving of the truck by him. The application was contested by the Respondent. The factum of accident and also that Nand Lal was employed as a Constable and was posted for duty at the barrier and he had died as a result of the accident, were admitted. The facts, that the Appellant was the widow of Nand Lal and he had left behind two sons and two daughters, were denied for want of knowledge. The other material allegations were controverted and it was pleaded inter alia that the truck was detailed on duty for defence purposes and, as such, the Respondent was not liable to pay any compensation and the claim was bad for non-joinder of Kartar Singh. Hence, the application was tried on the following issues:

1. Was the accident due to any negligent act on the part of the driver of the vehicle involved?
2. What is the quantum of compensation due, if any, and from whom to whom?
3. Are the Respondents Union of India not liable for payment of compensation?
- A. Is the application bad for non-joinder of any party?
5. Relief.

3. The Tribunal decided issue No. 1 in the affirmative and issue No. 4 in the negative. It held under issue No. 2 that the claimant along with her children was entitled to Rs. 24,600/- by way of compensation, but, finding issue No. 3 in favour of the Respondent, dismissed the application. Hence the Appellant came to this Court in appeal.

4. Assailing the finding by the Tribunal recorded on issue No. 3, Mr. K N. Tewari, learned Counsel for the Appellant, argued that the driving of the truck by Kartar Singh could not be said to be an act of sovereign and as such, no immunity could be claimed by the Respondent for the negligent driving of the truck by him (Kartar Singh). No precise definition of sovereign act is available in the judicial pronouncements and there appears difficulty in defining the same, or to enumerate a list of the same. The points as to whether which is sovereign act and what are sovereign functions and how far sovereign immunity is available in motor accident cases had been subject of decisions, the recent of which is reported in *Bakshi Amrik Singh v. The Union of India* 1974 A.C.J. 105. In this case, Amrik Singh had sustained injuries on account of rash and negligent driving of the military truck in Ambala Cantt. by Sepoy Man Singh who was detailed to check the military personnel on duty for the whole day. It was ruled that since Sepoy Man Singh was engaged in the discharge of duties in furtherance of functions of the sovereign, the Union of India was not liable to pay compensation

for the injuries sustained by Amrik Singh. In another case reported as Union of India v. Harbans Singh and Ors. AIR 1959 P.H 39 the accident had occurred as a result of rash and negligent act of the driver of a military truck while he was engaged on duty in supplying meals to military personnel on duty, the Union of India was not held to be liable" for compensation on account of the doctrine of "Sovereign Immunity". Certain tests have been laid down in Bakshi Amrik Singh's 1974 A.C. J. 105 case for determining an act to be that of the sovereign or the same being performed in discharge of the functions of the sovereign. It is stated therein that the maintenance of army is a sovereign function of the Union of India and in determining whether the claim of immunity should or should not be allowed, the nature of the act, the transaction in the course of which it is committed and the nature of the employment of the person committing it, have all to be considered. Admittedly, the truck belonged to the military. The duty slip (Exhibit RW1/1) reveals that Kartar Singh was detailed on duty to take the truck from the Unit Lines, Ambala Cantt. to Patiala for replacing the same with another truck. Lieutenant U.P. Bhatt (R.W. 1) deposed that the truck was being moved from Ambala Cantt. to Patiala on defence duty by Kartar Singh. When defence of the country and maintenance of army are the sovereign functions of Union of India, maintenance of vehicles including trucks in order, at relevant places is included in the functions of the army. As such, the same would include in the expression "maintenance of the army". The truck being that of military could not be entrusted to a private person for replacing the same with another truck at Patiala. Therefore, in the circumstances of the case and in view of the two Judgments, referred to above, I feel inclined to agree with Mr. J.S. Wasu, learned Advocate-General appearing for the Respondent, that Kartar Singh drove the truck while discharging the duties entrusted to him in the exercise of functions delegated by the sovereign at the time of accident. As such, the finding of the Tribunal on issue No. 3 seems to be correct. True, the Appellant and her children might have been rendered destitute of necessities of life because of the death of Nand Lal and they might have been plunged in distress, especially when per statement made in the application one of the said children is deaf and dumb and the other is lame, All these circumstances may attract sympathies. But sympathies cannot over ride law. The utmost that can be done, is that the Respondent may consider the case of the Appellant and her children sympathetically and pay to them some compensation ex gratia on compassionate grounds.

5. Karnail Singh (A.W.2) deposed that the truck driven by Kartar Singh had firstly struck against one of the drums lying on the road and then it hit Nand Lal and Bhagwan Dass and had further run over them. The truck, as he stated, stopped having gone into the pits lying by the side of the road. His statement was accepted by the Tribunal and I see no reason to disbelieve him. Reading his statement along with the doctrine of *res ipsa loquitur*, I have no hesitation in agreeing with the Tribunal that Kartar Singh had driven the truck negligently and it was due to his negligent driving of the truck that the accident which resulted in

death of Nand Lal, had taken place. So, the finding of the Tribunal on issue No. 1 is affirmed.

6. The Appellant stated that Nand Lal was drawing Rs. 175/- per month. The Tribunal allowed Rs. 55/- per month for the personal expenses of Nand Lal and found that he must have been contributing Rs. 120/- per month towards the maintenance of his family. There is no ground to differ from the Tribunal on that matter. The amount of Rs. 120/- per month can be earned as interest on an amount of Rs. 14,400/- if the same is prudently invested in some Bank. Therefore, in my opinion, Rs. 14,400/- would be just compensation money which could be claimed by the Appellant on her own behalf and on behalf of her children. The amount of Rs. 24,600/- determined by the Tribunal as compensation money if prudently invested in any scheduled Bank, would earn Rs. 205/- per month by way of interest. That amount would be more than the salary etc. which was drawn by Nand Lal. As such, the aforesaid-compensation amount of Rs. 24,600/- has to be held as excessive and cannot be said to be just. Therefore, I in disagreement with the Tribunal, would hold under issue No. 2 that just compensation amount payable to the Appellant and her children was Rs. 14,400/-.

7. It, thus, follows from the discussion above, that the Appellant can have no luck and this appeal fails in view of the finding on issue No. 3. Consequently, I dismiss this appeal, but in the peculiar circumstances, of the case, I leave the parties to bear their own costs.

8. Before parting with the case, I may observe that though the Respondent is not liable in law to pay compensation on account of the doctrine of "Sovereign Immunity" yet it would do good to pay compensation amount of Rs. 14,400/- or a part thereof to the Appellant for herself and for her children on compassionate grounds.