

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP No. 1979/2017

Reserved on: 19.12.2023
Pronounced on: 20.04.2024

Yaar Mohammad Kataria & anr. Petitioner/Appellant(s)

Through:- Mr. Faisal Javaid, Advocate

V/s

Union of India & ors.Respondent(s)

Through:- Mr. T. M. Shamsi, DSGI
Ms. Rekha Wangnoo, GA vice
Mr. Mubeen Wani, Dy. AG.

CORAM:HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. Petitioners have invoked the jurisdiction of this Court seeking compensation on account of the death of their son due to the negligence of the respondents.

02. In a tragic incident, two children namely Sarfaraz Ahmad Kataria son of Yaar Mohammad Kataria and Farooq Ahmad Kataria Son of Noor Ud Din Kataria died due to blast caused by unexploded shell which was lying in the forest area on 05.07.2009. Both the petitioners whose children have died due to blast caused unexploded shell lying in the forest seek a direction to the official respondents to compensate them adequately for their negligent act which has resulted in the death of their children.

03. The petitioners submit, that their children were 14 years and 15 years of age when they came in contact with an unexploded shell in

the forest area, while grazing their cattle. The blast caused by the shell led to the death. It is submitted that petitioners are involved in the activity of grazing cattle of the locals on the common land/forest area and their livelihood is dependent on the earnings from grazing cattle as they have no other source of income except their earnings from grazing cattle.

04. The contention of the petitioners is that apart from studying, their children were also taking care of the cattle of the locality for grazing and they used the earning to cater to the need of the family. It is further submitted that in the area where the petitioners reside, there is an army camp and artillery practice is being conducted in the area. It is only due to the negligence of the respondents, who failed to keep proper check upon the shell/ammunitions openly lying in the area to avoid any untoward incident which resulted in their children come in contact with the live shells which lead to their death. The respondents failed to conduct periodical inspection of the area and were negligent in their duty which has resulted in their children being victim of IED blast.

05. The respondents, it is submitted have not paid any compensation to petitioners for the loss suffered by them except paltry ex-gratia relief of Rs. 01 lac each. The petitioners, thus, seek compensation on account of the death of their children on the ground that the respondents were liable to take precautions and safeguards and failure on the part of the respondents would make them liable to pay compensation on account of the “strict liability”. The petitioners, thus, seek a direction to the respondents for payment of compensation for

their negligence which has resulted in the death of their children on spot.

06. The respondents in their objections submit that the writ petition involves disputed questions of fact which cannot be considered in these proceedings. They have also denied any involvement of the Army/Battalion in the death of two children which was caused by a blast of a likely Improvised Explosive Device (IED) which could be used by anti national elements insurgency area. It is further submitted that the ex-gratia relief of Rs. 01 lac each was granted by the Deputy Commissioner, Kupwara to the petitioners vide order No. 390-DCK dated 29.03.2008. Both the petitioners had signed “No Objection Certificate” to the effect that they have no claim against any individual/organization.

07. Heard learned counsel for the parties and perused the record available on file.

08. A blast took place at small arms firing range of 18 Rashtriya Rifles Battalion near fringes of Kuligam forest on 05.07.2007, which resulted in death of two persons namely Farooq Ahmad Kataria, aged about 14 years and Sarfaraz Ahmad Kataria aged about 15 years, who died on spot. Both the children of the petitioners were shifted to Kupwara Government Hospital where Sarfaraz Ahmad Kataria was died on spot and Farooq Ahmad Kataria was declared as brought dead.

09. The incident which occurred on 05.07.2007 is admitted and death of the children of the petitioners is also admitted. FIR No. 39/2007 in this regard was registered in Police Station Lalpora on

05.07.2007. As per the report in the local newspaper, children of the petitioners were playing in the nearby forest and had died due to blast. There is no dispute with regard to the death of the children due to blast near Kulgam forest. The respondents, however, have denied their liability on the ground that the death was caused due to explosion of IED which could have been planted or put forth by the anti national elements. Though, it is admitted by them that the blast took place at small arms firing range of 18 Rashtriya Rifles Battalion near fringes of Kulgam forest. The respondents have placed on record a certificate of both the petitioners saying that they have no claim against any individual, however, this would not come in the way of the petitioners seeking compensation on account of the death of their children.

10. The respondents submit that this petition is filed after considerable delay and, as such, is not maintainable. The fact that whether the explosion was caused by ammunition left by the army or by the IED of the anti national elements is disputed question of fact which cannot be gone into at this stage. The death of the petitioners' children had occurred in the year 2007 and the petitioners have approached this Court after more than ten years. The claim of the petitioners is that the State is duty bound to protect the life, liberty and property of the petitioners and the death on the unfortunate incident was due to callousness on behalf of the respondents, who have left their arms and not taken proper care of fire arms. The petitioners have lost their young children in an unfortunate incident of blast, whether the same has occurred due to negligence of the respondents or by some anti-national

elements would not preclude them from maintaining the petition even after delay. The ground of delay in the present facts and circumstances will not come in the way of the petitioners to seek compensation. More so, when the respondents have noticed these incidents and framed guidelines for assistance to victims.

11. The Ministry of Home Affairs has framed Revised Guidelines of Central Scheme for Assistance to Civilian victims/Family of Victims of Terrorists/Communal/Left Wing Extremism (LWE) Violence and Cross Border Firing and Mine/IED Blasts on Indian Territory, 2022. As per this scheme dated 30.03.2022, for incidents which have occurred during period 01.04.2008 to 23.08.2016, the finance assistance is Rs. 3 lacs and for incident occurred on or after 24.08.2016, the financial assistance is Rs. 5 lacs. Mr. T.M. Shamsi, learned DSGI submits that this scheme is effective only from, therefore, the benefit of the same cannot be granted to the petitioners. The clause 4 of the Revised Guidelines of Central Scheme for Assistance to Civilian victims/Family of Victims of Terrorists/Communal/Left Wing Extremism (LWE) Violence and Cross Border Firing and Mine/IED Blasts on Indian Territory, 2022 is reproduced as under: -

4. Eligibility

- i. The financial assistance would be given to the family member(s) in the event of death or permanent incapacitation of the civilian victim, in Terrorist, Communal or LWE Violence and Cross Border Firing and Mine/IED blasts on Indian Territory.
- ii. Assistance would be given to the surviving spouse in case of death/ permanent incapacitation of the husband or the wife, as the case may be. However, if both the husband and the wife die in same incident of violence, the family would be entitled to get the assistance, in each case.
- iii. Families of the victims would be eligible to get assistance under the Scheme even, if they have received any other assistance, by way of payment of ex-gratia or any other type of relief from the

- Government or any other source except when a similar scheme is already being implemented by the Central Government.
- iv. Civilian victim/ Next of Kin (NoK) will be eligible to get financial assistance under the Central Scheme even if he/she or any other person in the family has been given a permanent Government job on compassionate grounds.
 - v. Civilian Victim/NoK of the Security Related Expenditure (SRE) Districts/States will be eligible to get financial assistance under SRE Scheme also in addition to the financial assistance under the Central Scheme. In the case of Jammu & Kashmir, financial assistance will be governed by the letter No.16016/4/2017-K-V dated 14th June 2018 issued by Jammu and Kashmir Division (now Jammu, Kashmir & Ladakh Affairs Division), Ministry of Home Affairs.
 - vi. Next of Kin (NoK) of employees of Central Government, CPSEs, Autonomous Institutions and other Government Organizations including State Governments / State PSEs and similar organizations of State Governments will also be eligible to receive financial assistance of Rs.3 Lakh/Rs.5 Lakh as the case may be, in case of death/ permanent incapacitation (50% and above) on account of incidents of Terrorist/ 2 Communal/ LWE Violence and Cross Border Firing and Mine/IED blasts on Indian Territory.
 - vii. Foreign Nationals and NRIs shall also be eligible / covered under the Scheme w.e.f. 01.04.2008 i.e. the date from which this Scheme has been made effective.
 - viii. Those permanently incapacitated, and the members of the family of the civilian victims killed/permanently incapacitated in the Terrorist, Communal or LWE Violence and Cross Border Firing and Mine / IED blasts on Indian Territory would be given a health card by the District Health Society, functioning under the National Rural Health Mission. This card would entitle them to free medical treatment in respect of injuries due to violence and all other major illnesses. Medical care will also be provided to the beneficiaries of the Scheme as a special case under the on-going schemes of the Ministry of Health and Family Welfare, viz., Rashtriya Arogya Nidhi and the National Trauma Care Project.
 - ix. Children in the family would continue to be entitled for assistance admissible under the project 'Assist', implemented by the National Foundation for Communal Harmony (NFCH) of the MHA.
 - x. No other criteria regarding income of the family would be considered for the eligibility under this scheme.
 - xi. The perpetrators of violence or their family will not be entitled to any assistance under the scheme.
 - xii. The eligible claimants can file their claims in prescribed proforma (Annexure-1) within 3 years of the relevant incident of Terrorist, Communal or LWE Violence and Cross Border Firing and Mine/IED blasts on Indian Territory through the DM/DC/State Government concerned. The time limit, however, can be relaxed in deserving cases by the Central Government on the recommendations of the State Govt. or by the Central Government suo-moto.

12. As per the revised guidelines, petitioners fulfill the eligibility as the death has occurred as per 4(1) due to IED blast on Indian territory and families can be granted assistance even if they have received assistance by ex gratia or any other relief. The only issue is there

guidelines provide for incidence that are operative from 01.04.2008, the death have occurred in 2007 and this scheme to being assist the civilian victim of terrorist violence, the benefit of the same cannot be denied to the petitioners who were unable to seek any compensation for the death of their children. The petitioners cannot be denied the benefit of the scheme. The financial reimbursement scheme is payable to the eligible beneficiaries in the first instance and the petitioners fall within in the definition of Clause -3(d) Next of Kin which would be the surviving spouse or dependent children or as certified by the District collector/Magistrate/Deputy Commissioner and are eligible to get financial assistance as the death had occurred due to IED Blast.

13. In view of this revised scheme, the petitioners are entitled to an amount as stated in Clause-2 of the guidelines of financial assistance. This scheme does not bar in raising of a claim for compensation even after the lapse of considerable period of delay.

14. In view of the aforesaid facts and circumstances, both the petitioners are held entitled to compensation as per the Revised Guidelines of the CSACV of the manner as set up in Clause-2 of the Revised Guidelines. This amount will be paid to the petitioners within a period of eight weeks from the date copy of this order along with the necessary documents are provided to the respondents by the petitioners.

(SINDHU SHARMA)
Judge

SRINAGAR
RAM MURTI
20.04.2024

Whether the judgment is speaking : *Yes*
Whether the judgment is reportable : *Yes*