

Union Territory Of J&K And Another Vs Kamlo Devi

Court: Jammu And Kashmir High Court

Date of Decision: March 28, 2023

Acts Referred: Jammu And Kashmir State Ranbir Penal Code, 1989 â€” Section 304A

Hon'ble Judges: Tashi Rabstan, J; Rajesh Sekhri, J

Bench: Division Bench

Advocate: Amit Gupta, Vikas Magotra

Final Decision: Dismissed

Judgement

Tashi Rabstan, J

1. This Letters Patent Appeal is directed against the judgment dated 19.03.2021 passed by the learned Single Judge in OWP No.01/2013, whereby the

learned Single Judge while allowing the petition, held that the writ petitioner is entitled to compensation of rupees ten lacs as minimum compensation

for the death of her husband.

2. The facts, as gathered from the writ file, are that the husband of writ petitioner, namely, Kartar Chand died of electrocution by high intensity

electric line on 25.07.2011 at Bajalata, Jammu, when he was working as a Mason on the roof of the house of one Puran Chand son of Mangal Das.

Accordingly, FIR No.212/2011 was registered at Police Station, Nagrota under Section 304-A RPC against the concerned officials of Power

Development Department. Writ petitioner filed OWP No.01/2013 seeking compensation from the writ respondents-appellants herein on account of

negligence on the part of writ respondents.

3. The learned Single Judge while allowing the writ petition vide judgment dated 19.03.2021 held that the writ petitioner is entitled to rupees ten lacs as

minimum compensation. Feeling aggrieved, the appellants-writ respondents have filed the instant appeal.

4. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal file. Record of writ petition was also

called from the Registry.

5. The stand of appellants-writ respondents is that when the writ petitioner filed OWP No.01/2013 seeking compensation on account of death of her

husband due to electrocution, at the relevant time Government Order No.328-PDD of 2011 dated 24.11.2011 was in force, whereby an ex-gratia relief

of rupees three lacs had been allowed in case of death of a civilian due to electrocution. The stand of appellants-writ respondents is that even if any

consideration was required under the policy, the writ petitioner was required to be allowed rupees three lacs in terms of order dated 24.11.2011

(supra). However, the learned Single Judge allowed rupees ten lacs as minimum compensation in favour of writ petitioner while relying upon

Government Order No.454-F of 2019 dated 24.10.2019, whereby an ex-gratia relief of rupees ten lacs has been allowed in case of death of a civilian

due to electrocution due to the negligence of the Power Development Department.

The further stand of appellants-writ respondents is that since the order dated 24.10.2019 (supra) does not have retrospective effect and the incident-

in-question was of July, 2011; as such the learned Single Judge was wrong in allowing rupees ten lacs as minimum compensation in favour of writ

petitioner.

6. The husband of writ petitioner is stated to be died on 25.07.2011 due to electrocution and the writ respondents in their objections have not disputed

the same. Further, in paragraph-9 of the writ petition, the writ petitioner has specifically averred that after the death of her husband she approached

the respondents through the medium of representations/requests for grant of adequate compensation, but the writ respondents had failed to do the

needful. One such representation is also annexed with the writ petition, addressed to the Commissioner-cum-Secretary to Government, Power

Development Department; Development Commissioner (Power) and Chief Engineer, Power Development Department. The writ respondents while

making reply to this paragraph have not rebutted the same in any manner; meaning thereby the writ respondents have admitted the contents of the

paragraphs but despite that they did nothing, which shows their lackluster approach and indifferent attitude in dealing with such cases involving

compassion, which raises a serious question mark on their functioning.

7. As regards the stand of appellants-writ respondents that even if any consideration was required under the policy the writ petitioner was required to

be allowed rupees three lacs in terms of order dated 24.11.2011 (supra), we deem it proper to reproduce hereunder the relevant portion of paragraph-i

(Factual Matrix) of the objections filed by the writ respondents to the writ petition:

“It is relevant to mention here that in terms of policy envisaged by the Government for grant of ex-gratia relief to departmental and non-

departmental persons who are killed/grievously incapacitated due to electric related accidents are governed under Government Order No.328-PDD of

2011 read with Government Order No.454-F of 2019 dated 24.10.2019 subject to the explicit condition that the accident is not attributable to them but

to the lapses, attributable to the Power Department, as verified by the Director, TT&C.

8. In the objections the writ respondents have themselves averred that the persons who are killed due to electric related accidents are governed under

Government Order No.328-PDD of 2011 read with Government Order No.454-F of 2019 dated 24.10.2019, i.e., Government Order No.328-PDD of

2011 cannot be read in isolation after issuance of Government Order No.454-F of 2019 on the same subject; meaning thereby the writ petitioner

though was entitled to get ex-gratia relief of rupees three lacs before issuance of order dated 24.10.2019, but once the writ respondents failed to pay

her the said compensation for such a long period and, in the meantime, the Government issued another order enhancing the ex gratia relief, the learned

Single Judge was justified in allowing rupees ten lacs as minimum compensation in terms of order dated 24.10.2019 as the judgment came to be

delivered on 19.03.2021, i.e., much after the issuance of Government order dated 24.10.2019. Further, although the writ petition came to be filed in

January, 2013, but the writ respondents filed objections to the writ petition on 12.12.2019, i.e., after the issuance of order dated 24.10.2019 (supra) and

that is why the writ respondents while filing objections to the writ petition had averred that such accidents are governed under Government Order

No.328-PDD of 2011 read with Government Order No.454-F of 2019 dated 24.10.2019, i.e., in their own wording while allowing ex-gratia relief in

such like matters order dated 24.10.2019 cannot be ignored. The fault, therefore, lies on the part of writ respondents who took seven years to file

objections to the writ petition when the Government Order dated 24.10.2019 (supra) had already been issued. Further, order dated 24.10.2019 is a

beneficial order issued by the Government in larger public interest with an objective to provide dignified/sufficient monetary support to the families of

such victims so as to save them from living a destitute life.

9. Further, in paragraph-D of the grounds of instant appeal, the appellants have also questioned allowing of 6% interest by the learned Single Judge on

the ground that though the writ petition was filed in the year 2013 but the same had remained pending consideration before the Court for about eight

years; meaning thereby the appellants have attributed the delay in deciding the writ petition on the part of the Court itself.

10. It is to be seen here that the writ petition came to be filed on 1st January, 2013. Notice of the writ petition came to be issued on 2nd January, 2013;

relevant portion of the order is reproduced hereunder:

Issue Notice.

Ms Shekhar accepts notice for respondents.

Response to Writ Petition within four weeks.

List in February, 2013.

11. Thus, when the notice was issued on 02.01.2013, on the very said date Mrs Seema Shekhar, the then AAG, waived notice on behalf of writ

respondents. She was directed to file objections to the writ petition within four weeks and the matter was directed to be listed in February, 2013.

Thereafter, the matter was listed on 22.02.2013, 21.08.2014, 08.09.2014 and 13.03.2015 but the writ respondents failed to file objections to the writ

petition. Again, when the matter was listed on 16.04.2015, last and final opportunity was granted to the writ respondents for filing objections, failing

which the right to file objections was to be closed. Thereafter, the matter was listed on 14.08.2019 and then on 15.10.2019 when the learned counsel

for respondents sought one more opportunity for filing objections, which was granted subject to payment of rupees ten thousand as costs. After that

the matter was listed on 04.12.2019 and once again the writ respondents failed to file objections. Again the matter was listed on 28.12.2019 when it

was stated that the objections had been filed on 12.12.2019 and the costs have been paid; meaning thereby the writ respondents took almost seven

years in filing objections to the writ petition. On 02.01.2013 it was directed by the learned Single Judge to file objections within four weeks (04), but

the writ respondents took three hundred and fifty six weeks (356 weeks) in filing objections to the writ petition, least bothering that the writ petitioner

had been hankering from pillar to post for getting compensation on account of death of her husband due to electrocution due to the negligence of

Power Development Department. Now in paragraph-D of the grounds of instant appeal the writ respondents have shamefully attributed the delay of

eight years in deciding the writ petition on the part of the Writ Court. If the writ respondents had filed the objections within the time allowed, the writ

petition might have been decided much before issuance of Government Order No.454-F of 2019 dated 24.10.2019 enhancing the ex-gratia relief from

rupees three lacs to rupees ten lacs. Therefore, at this stage it does not lie in the mouth of writ respondents to claim that the learned Single Judge

ought to have allowed compensation in terms of Government Order No.328-PDD of 2011 dated 24.11.2011 instead of Government Order No.454-F

of 2019 dated 24.10.2019. Therefore, this appeal is nothing but sheer wastage of court time and public money by those running the affairs of the UT.

12. Viewed thus, while upholding the judgment of learned Single Judge, we do not find any merit in the appeal and the same is, accordingly, dismissed

along with connected CM.