

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS.6689-6690 OF 2019
(@ Special Leave Petition (C) Nos.23260-23261 of 2012)**

MANJU TIWARI

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

O R D E R

1. Leave granted.
2. The husband of the appellant was enrolled in the Army as a combatant soldier on 1.11.1983. He was deployed along the Pakistan border during Operation Vijay (i.e. Kargil War) in Rajasthan sector. On 11.08.1999, he suffered a heart attack due to which he passed away. The appellant was granted special family pension. She filed a writ petition in the Delhi High Court claiming liberalized family Pension instead of special family pension with effect from 12.08.1999 on the basis of instructions issued by the Ministry of

Defence, Government of India, on 31.01.2001. The High Court allowed the writ petition by Judgment dated 4.03.2005. The said judgment of the High court has become final as it was not challenged by the respondents.

3. The appellant filed Writ Petition (Civil) No.1973 of 2006 claiming other benefits that she was entitled to as per the communication dated 31.01.2001. The Division Bench of the High Court of Delhi disposed of the said writ petition directing the respondents to re-examine the claim of the appellant.

4. Pursuant to the judgment of the High Court, a reasoned speaking order was passed on 29.04.2009 in which it was held that the appellant was not entitled for grant of ex-gratia lump sum compensation. It was stated in the said order that all the other benefits admissible under category-E of paragraph 4.1 of the Letter issued by Ministry of Defence dated 31.01.2001 have already been granted to her.

5. The basis for rejection of the claim of ex-gratia lump sum compensation was that the death

of the husband of the appellant was classified as physical casualty. It was observed in the said order that re-classification of the death of the husband from physical casualty to battle casualty was already rejected earlier on 23.11.2005. It was mentioned in the said order dated 29.04.2009 that the appellant was not entitled to ex-gratia payment amount of Rs.7,50,000/- as she was not a widow of battle casualty.

6. The reasoned speaking order was subject matter of challenge before the Armed Forces Tribunal, Principal Bench, New Delhi. Vide order dated 18.02.2011, the Armed Forces Tribunal dismissed O.A No.78 of 2010 by holding that the death of husband of the appellant cannot be categorised as a battle Casualty and hence the appellant was not entitled to ex-gratia payment. Thereafter, the appellant approached the High Court by filing a writ petition assailing the correctness of the judgment of the Tribunal.

7. The High Court upheld the judgment of Tribunal and dismissed the writ petition. The appellant filed a review petition which was allowed by the

High Court, and the appellant was held to be entitled for payment of Rs.5,00,000/- ex-gratia.

8. Learned Additional Solicitor General appearing for the respondent(s) informs us that the appeal filed by the respondents against the judgment of the High Court directing payment of Rs.5,00,000/- as ex-gratia was dismissed on the ground of delay.

9. The learned counsel for the respondent referred to the judgment of the Delhi High Court in Writ Petition (C) No.5262 of 2003 in which it was held that the death of the appellant's husband was on account of his participation in an operation in a war like situation as enumerated in Clause (i) of Category-E of the Instructions dated 31.01.2001. In view of the said findings, the death of the appellant's husband has to be treated as a battle causality and not a physical causality. She further submitted that the appellant is entitled for ex gratia amount of Rs.10,00,000/- which was promised by the State of UP to the next of kin of defence personnel killed in action.

10. Smt. Madhavi Diwan, learned Additional Solicitor General submitted that the appellant is

not entitled for any payment of ex-gratia as the death of the husband of the appellant could not be said to be covered by the policy Circular/letter dated 22.09.1998. The husband of the appellant cannot be treated as a battle casualty as he died due to a heart attack.

11. Mr. V. Shekhar, learned Senior Counsel appearing for the State of Uttar Pradesh submits that the High Court rightly dismissed the claim of the appellant against the State of Uttar Pradesh as there is no evidence produced in support of her claim against the State. He further submitted that there is no material produced in the appeal also to support the case of the appellant. The claim of the appellant for payment of ex-gratia as per the letter dated 22.09.1998 is not dependent on the entitlement of the appellant for liberalized pension.

12. Having gone through the reasoned speaking order dated 29.04.2009 which was upheld by the Tribunal and the High Court, we are of the opinion that the death of the husband of the appellant which was due to 'acute anteroseptal and interior

wall myocardial Infraction' cannot be termed as a battle casualty. The submission of the learned counsel for the appellant that the appellant should be treated as a battle casualty in view of the judgment of the Delhi High Court in Writ Petition NO.5262 of 2003 by which she was found to be entitled to liberalized pension is unacceptable. The payment of ex gratia is governed by the Instruction dated 22.10.1998. The entitlement of the appellant shall be strictly in accordance with the said Instruction. According to the Instructions dated 22.10.1998, ex-gratia of Rs.7.50 lakhs is payable only in case of a death occurring during (i) enemy action in international war or border skirmishes and (ii) action against militants, terrorists, extremists, etc. As the death of the appellant's husband was due to a cardiac problem, she was rightly held to be entitled for payment of ex-gratia of Rs.5 lakhs.

13. The relief claimed by the appellant against the State of UP was rightly rejected by the High Court.

14. In view of the aforesaid, we uphold the

judgment of the High Court and dismiss these appeals.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

NEW DELHI
AUGUST 28, 2019

ITEM NO.101

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.7459-7460/2010

KANCHAN DUA

Appellant(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

WITH

SLP (C) Nos.23260-23261 of 2012 (XIV-A)

SLP(C) Nos.8588-8589/2014 (XIV)
(IA No. 1/2014 - CONDONATION OF DELAY IN FILING)

SLP(C) No. 26105/2015 (XIV)

Date : 28-08-2019 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Ms. V. Mohana, Sr. Adv. (A.C)
Ms. Nikita, Adv.

Mr. Mukesh Kumar Maroria, AOR

Mr. Vivek Gupta, AOR
Mr. Mrinmay Bhattmewara, Adv.
Mr. Brajende Kaushik, Adv.

Ms. Chitragda, Adv.
for Mr. Gp. Capt. Karan Singh Bhati, AOR

For Respondent(s) Ms. Madhvi Divan, ASG
Mr. Rana Mukherjee, Adv.
Ms. Manjula Gupta, Adv.
Mr. Rishabh Jain, Adv.
Mr. Arvind Kr. Sharma, Adv.
Mr. Rajesh Ranjan, Adv.
Ms. Snidha Mehra, Adv.

Mr. V. Shekhar, Sr. Adv.
Mr. Kamendra Mishra, Adv.
Mr. Rajeev Kumar Dubey, Adv.
Ms. Sheetal Rajput, Adv.

Mrs. Rachna Gupta, AOR
Mrs. Anil Katiyar, AOR
Mr. B. V. Balaram Das, AOR

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal Nos.7459-7460/2010, SLP (C) Nos.8588-8589/2014 and 26105/2015

Hearing concluded.

Judgment reserved.

Written submissions be filed within a week.

SLP (C) Nos.23260-23261 of 2012

Leave granted.

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, shall also stand disposed
of.

(POOJA ARORA)
COURT MASTER

(SUNIL KUMAR RAJVANSHI)
BRANCH OFFICER

(Signed order is placed on the file)