

Union of India and Another. Vs. Ashok Narayan Paldhe and Others.

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Court : Andhra Pradesh

Decided On : Apr-04-2013

Judge : The Hon'Ble the Chief Justice Sri Kalyan Jyoti Sengupta

Appellant : Union of India and Another.

Respondent : Ashok Narayan Paldhe and Others.

Advocate for Def. : Sri. Ponnam Ashok Goud Counsel

Advocate for Pet/Ap. : Sri. Sunil Ganu

Judgement :

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY AND THE HON'BLE SRI JUSTICE K.G.SHANKAR Appeal Suit No.3504 o

04. 04.2013 Union of India and another.

Ashok Narayan Paldhe and others.

Counsel for appellants: Sri Ponnam Ashok Goud Counsel for Respondents : Sri Sunil Ganu HEAD NOTE: ?Cases referred 2004 (1) ALD 1.

JUDGMENT

: (Per the Hon'ble Sri Justice L.Narasimha Reddy) This appeal is filed against the judgment and decree, dated 12.04.2004, passed by the Court of II Additional Senior Civil Judge, Kakinada, in O.S.No.90 of 1997.

Respondents 1 and 2 filed the suit and the appellants figured as defendants 3 and 2 therein.

While the 3rd respondent figured as 1st defendant, respondents 4 to 8 were arrayed as defendants 4 to 8.

For the sake of convenience, the parties herein are referred to as arrayed in the suit.

Plaintiffs are the parents of one Sri Amar Ashok Paldhe.

He was recruited as Seaman-I, Clearance Diver not III, and in the year 1993, he was in the Eastern Naval Command Clearance Diving Scheme.

On 21.09.1993, Paldhe was in an operational exercise at Kakinada Coast.

As part of the exercise, he jumped from the Helicopter into the sea and he was supposed to reach the shore by swimming.

However, after he jumped into the sea, he did not reach the shore and his dead body was found two days thereafter i.e.

on 23.09.1993.

The plaintiffs were given the intimation at a later point of time.

The post- mortem was conducted on the body.

The cause of the death was not mentioned.

The report revealed that there are anti-mortem injuries over the dead body of the deceased.

The Board of Enquiry was conducted and a finding was given to the effect that the cause of the death was mentioned as "due to accident".

Alleging that the defendants did not furnish the relevant information, the plaintiffs filed W.P.No.316 of 1995 before the Bombay High Court for certain directions.

By mentioning all the facts, referred to above, the plaintiffs filed the suit claiming compensation of Rs.15 lakhs from the defendants.

They pleaded that the death of the deceased occurred, on account of negligence and collusion, on the part of the defendants, and under mysterious circumstances.

A written statement was filed by defendants 1 and 2.

According to them, Paldhe was put on regular exercise of diving and though he surfaced soon after jumping from the Helicopter, he did not surface thereafter.

It was pleaded that the death might have occurred due to failure of the deceased to release the weights fixed to the belt.

It was also pleaded that the plaintiffs were extended all the benefits, on account of the death of their son and that there are no merits in the suit.

The grounds of limitation and want of jurisdiction were also pleaded.

The trial Court decreed the suit for a sum of Rs.10 lakhs.

Defendants 3 and 4 filed this appeal.

Sri Ponnam Ashok Goud, learned Assistant Solicitor General, submits that though specific plea was raised in the written statement that the suit was barred by limitation, the trial Court did not frame any issue, nor did it record the findings thereon.

He contends that the suit was filed after expiry of limitation, and it ought to have been dismissed on that ground.

It is further pleaded that the death of the deceased was not on account of any negligence on the part of the defendants, and the job of the deceased was risky, by its very nature.

According to him, every possible care was taken to avoid accidents.

Learned counsel further submits that though search was undertaken to recover the body, the body could not be recovered for two days, since the accident occurred in the sea.

He contends that once the benefits provided for under the relevant regulations were extended, the plaintiffs are not entitled to recover any damages.

It is also pleaded that the plaintiffs wanted to have access to privileged information and denial of the same was treated as though certain facts were withheld from them.

He submits that the decree passed by the trial Court cannot be sustained in law.

Sri Sunil Ganu, learned counsel for the plaintiffs, on the other hand, submits that there are several suspicious circumstances surrounding the death of the deceased, and every effort was made by the defendants to conceal the information.

He contends that the reason mentioned in the post-mortem as to the cause of death was changed and everything was left open.

Learned counsel submits that even though Diatom test was directed to be conducted, gross negligence was exhibited for a period of one year, and in the meanwhile, the Board of Enquiry conducted and concluded.

He submits that the very fact that the anti-mortem injuries were found on the body of the deceased is sufficient to suspect mischief on the part of the officials, who were associated with the exercise.

Learned counsel submits that in the name of official secrecy, the relevant information was withheld and the plaintiffs were not even permitted to meet the other divers.

On the question of limitation, learned counsel submits that the suit was filed only after the plaintiffs were convinced that the respondents are not furnishing information and the limitation cannot be reckoned from the date of death of the deceased.

It is also pleaded that there is no bar against grant of damages, in case there was negligence on the part of the Government and its Departments.

The plaintiffs prayed for a decree for damages alleging gross negligence and highhandedness on the part of the defendants, in relation to the death of their son.

On the basis of the pleadings before it, the trial Court framed the following issues for its consideration: i) "Whether the present suit for the relief of compensation as claimed by the plaintiff is not maintainable? ii) Whether the death of son of plaintiff was due to want of care, negligence and callousness of defendants as pleaded by plaintiffs? iii) Whether the plaintiffs are entitled to suit amount with interest? iv) To what relief?" The deceased-1st plaintiff deposed as PW.1 and he filed Exs.A.1 to A.25.

On behalf of the defendants, DWs.1 and 2 were examined and Ex.B.1-a newspaper cutting was filed.

No other evidence was adduced by them.

All the issues were answered in favour of the plaintiffs.

In view of the arguments advanced before this Court, the following points arise for consideration: i) Whether the suit filed by the respondents is barred by limitation? ii) Whether there existed any suspicious and mysterious circumstances surrounding the death of Ashok Anand Paldhe? iii) Whether there is any bar in law, prohibiting award of damages, on account of the death of a soldier or seaman, if it is proved that the death occurred under mysterious circumstances? The first point, as to limitation, needs to be discussed at the threshold.

The death of the deceased occurred on 21.09.1993.

The suit was filed in the year 1997.

If it is a case of recovery of money on the basis of a cause of action, that occurred in the year 1993, the suit filed four years thereafter, would naturally be barred by limitation.

In the instant case, sequence of events presents an unfortunate state of affairs.

The information as to the death of their son was given to the plaintiffs through a telegram.

However, everything was kept outside their reach and hardly an information as to cause of death was furnished.

The correspondence went on till November, 1993.

They were not even permitted to meet any official, much less the fellow divers.

On 18.11.1993, a letter was addressed to the plaintiffs by the officials of the Indian Navy, that a Board of Enquiry will be constituted.

In the meanwhile, though post-mortem was conducted, the cause of death was not mentioned.

A test known as 'Diatom' was directed to be conducted.

That took more than one year, to be completed.

On 01.06.1994, the plaintiffs were informed by the Director of Personnel Services, New Delhi, that the report of the Board of Enquiry cannot be furnished to them.

The plaintiffs continued their efforts till September, 1994.

It was only in September, 1994 that they could get some information pertaining to the death of Paldhe, such as that the Helicopter was at a considerable height and not at 15 feet from the sea level, the opinion formed by defendant No.6 as to the cause of death was wrong and that defendant No.6 was not even censured for his negligence.

After getting this much of information, the plaintiffs filed the suit.

The date of death of the deceased can not at all constitute the starting point for calculating the period.

Obviously, for this reason, a halfhearted plea was raised in the written statement and the defendants did not insist on the framing of any issue on the question of limitation.

Learned counsel for defendants 3 and 4 is not able to demonstrate that the suit is barred by limitation.

The point is accordingly answered.

Coming to the second point: In his deposition as PW.1, the 1st plaintiff reiterated the contents of the plaint.

He has also filed voluminous documentary evidence, which included the copies of reports and other letters furnished by the defendants.

The statements of some of the officials that were recorded during the course of enquiry, such as Exs.A.4 to A.12 were also filed.

The post-mortem certificate was filed as Ex.A.5.

So far as the evidence of the defendants is concerned, it just comprised of a newspaper cutting and nothing more.

The life of a seaman entrusted with the function of diving or for that matter, any person, who joins the armed forces, is vulnerable to risks.

If the death occurs in the course of any armed conflict, or military operations, no person would accuse the State or the concerned authorities, of any negligence.

Where, however, the death occurs in peace time and there are suspicious circumstances, surrounding the incident, a close scrutiny becomes necessary.

The record, in the instant case, discloses that Ashok Anand Paldhe was a well trained and perfect diver.

Officials of the Navy themselves certified him as a 'cut above the other divers'.

It was mentioned that he used to demonstrate the diving from a height of 10 metres even in swimming pools.

From the written statement of defendants 1 and 2, it is evident that the two divers who jumped from helicopter before Paldhe, faltered and they had to be rescued by the team.

It was mentioned that soon after jumping from the Helicopter, Paldhe surfaced and has shown his thumb up and thereafter went into the water, but did not return.

If any accident has occurred, the rescue team ought to have saved him.

The version put forward by the defendants at various points of time, was not consistent.

While at one place, it was stated that he surfaced perfectly soon after diving, at another place, it was mentioned that it was not visible on account of the turbulence caused by the Helicopter.

Be that as it may, the post-mortem report revealed that the following two anti-mortem injuries were found on the body of Paldhe: "i) a lacerated injury over the left axilla measuring 10x60 mm x 3 cm edges are irregular and bruised.

In its depth muscles, blood vessels and nerves are exposed.

Tiny ante mortem blood clots are seen at its depth.

ii) A circular wound seen over the inner aspect of left angle of the mandible measuring 1.5 cm diameter with a depth of 3 cm edges are clean out." No effort was made to explain these injuries.

The plaintiffs were denied access even to the other divers.

Though the Board of Enquiry suspected the role of some of the officials connected with the exercise, no action was taken thereon.

The final opinion in the post-mortem as to cause of death was deferred, awaiting the result of Diatom test.

The record reveals that the Diatom test was delayed more than one year, just on account of failure to send the sea water from the concerned area.

Even before the Diatom test result was obtained, the Board of Enquiry was concluded.

The cumulative effect of all these acts and omissions is that the death of some of the plaintiffs occurred under suspicious and mysterious circumstances.

The point is answered in favour of the plaintiffs.

The last point is about the defences taken by the defendants that the damages/compensation cannot be claimed against the State.

As a matter of fact, the first issue was framed by the trial Court is about this.

Identical question arose before this Court in A.V.Janaki Amma v.

Union of India¹.

It was categorically held that if the negligence or want of proper care on the part of State is proved, the tortious liability to pay damages/compensation would arise and the same needs to be treated as constitutional tort.

No decided case is cited as to how a State can claim immunity from the obligation to compensate the dependants of its employee, if it is proved that the death occurred on account of its negligence and lack of proper care.

The point is answered accordingly.

We do not find any merits in the appeal and it is accordingly dismissed.

There shall be no order as to costs.

The miscellaneous petition filed in this appeal shall also stand disposed of.

_____ L.NARASIMHA REDDY, J.

_____ K.G.SHANKAR, J.

Dated:04.04.2013

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