Parvesh Rani and Others Vs. Uoi and Others

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Court : Delhi

Decided On : Jul-03-2012

Judge : Pradeep Nandrajog &Amp; Sunil Gaur

Appeal No. : WP(C) 2732 OF 2010

Appellant : Parvesh Rani and Others

Respondent : Uoi and Others

Judgement :

PRADEEP NANDRAJOG, J.

1. Enrolled as a Constable with Border Security Force, deceased Chandervir was attached with E Coy of the 18th Bn. which in the year 2004 was deployed at Border Out Post Tarakpur, North Tripura.

2. On September 24, 2004, Chandervir was on operational duty at the Out Post and thus was issued a Self Loading Rifle and a magazine containing 50 bullets. He was to patrol the Line of Control assigned to him at the Border Out Post. Ct.Sube Singh and Ct.B.N.Hazara were the two other colleagues of Chandervir who were on duty at the Border Out Post. As per practice, the three had to individually and separately patrol different segments of the border which were assigned to them. At around 12:05 PM, when the duty time was over and as Ct.Sube Singh and Ct.B.N.Hazara were on the way back to the company headquarters, there was a sound of gun fire and a civilian named Girija Kumar

Das rushed to the place from where the sound of gun fire was heard and saw Chandervir lying injured on the ground with his Self Loading Rifle lying at a distance of about 2 - 2 feet. Girija Kumar rushed to the town nearby to arrange a rescue vehicle and before he could return SI Sahay Sanga and HC T.T.Joseph reached the spot and in the jeep brought by Girija Kumar removed Chandervir to a government dispensary at Kadamtala where after administering first aid to Chandervir he was taken to the Sub-Divisional Hospital at Dharamnagar.

3. In the meanwhile, Dr.S.K.Mishra, Chief Medical Officer attached with the 18th Bn., accompanied by ASI/PH Surender But reached the hospital at Dharmanagar where the doctor treating Chandervir informed them that Chandervir's condition was critical and it was immediately necessary to evacuate him to a full-fledged hospital where necessary medical facilities were available inasmuch as the Sub-Divisional Hospital was not equipped to deal with such emergencies and thus arrangements were made by requisitioning a helicopter to shift Chandervir to Silchar Medical College and for which Chandervir was removed from the hospital in an ambulance to the nearby helipad. Unfortunately, due to inclement weather the rescue helicopter could not land and hence returned to its base. Chandervir was taken back to the Sub- Divisional Hospital where he expired at around 08:40 PM the same day i.e. after about 8 hours and 35 minutes of the incident in which he got injured.

4. Death being unnatural FIR No.19/2004 PS Dharamnagar was lodged pertaining to the incident and it would be our duty to highlight that the FIR was registered pursuant to a written letter written by Dy.Comdt.Nitin Arora, relevant portion whereof reads as under:-

"It is inform that on 24 Sept. 2004 about 1205 pm, when one OP party of BOP Tarakpur was returning from BOP from duty one firing caused accidental nature took place. The OP party Constable of Ct. No.89141292 of Sube Singh

(2) No.92187047 Ct.BN Hazra

(3) No.90173897 Ct.Chandbir Singh

While the above party was 500 short of Tarakpur, Ct. Chandbir Singh who was walking in the car and the party was climbing towards the port, slipped on the roadside while he was falling down, due to disbalance Jawan could not control his body and weapon and as a result one accidental shot from his personal weapon SLR body No.CR-3909 Butt No.423 took place. The bullet pierced his stomach from left side and exited from left side of the back of thebody……"

(Emphasis Supplied) 5. The next day i.e. on September 25, 2004 the Commandant, 18th Bn. issued a signal addressed to the Headquarters, BSF Control Room, informing about the death of the deceased. The relevant portion whereof reads as under:-

"OBITUARY (.) DG BSF AND ALL RANKS OF BSF CONDOLE WITH DEEPEST SORROW ON THE SAID UNTIMELY DEMISE OF NO.90173897 CONST CHANDVIR SINGH OF THIS UNIT ON 24 SEPT"04 AT ABOUT 2040 HRS DUE TO ACCIDENTAL FIRE BULLET INJURY AND SUCCUMBED IN SUBDIVISIONAL HOSPITAL DHARMANAGAR….." (Emphasis Supplied)

6. On the same day i.e. September 25, 2004 Dr.Manindra Kumar Malakar conducted the post-mortem of the deceased and prepared the post-mortem report. The relevant portion whereof reads as under:-

"Wounds position, size, character

1. Multiple abrasions of varying sizes and irregular shapes over flexor aspect of distal half of the left forearm.

2. Other wounds (ie, Entry wound and exit wound of bullet) described later.

…..

EXIT WOUND: - 1 " diameter with ragged exerted margin over the Left Lower chest wall along posterior axillary line causing fracture of 10th and 11th ribs. Shape of the wound - Oval.

….

ENTRY WOUND:- In the epigastric region of the abdomen, ” (half) diameter, circular in shape with contused, ragged inverted margin and there is surrounding blackening, tattooing 1” width around the said wound which is caused by a bullet. Particles of unburnt gun powder drivened into the Entry wound.

…..

Distance from where it was fired: - “POINT BLANK”

….

COURSE:- Bullet pierced with Laceration - Skin, anterior abdominal wall in the epigastric region, peritoneum, stomach, splenic flexure of the colon, spleen, intercoastal muscles and Left Lower chest wall along posterior axillary line. In this process spleen shattered and clotted blood present, 10th and 11th ribs along exit wound fractured and there is massive haemoperitoneum.

….

In our opinion, the cause of death is due to Syncope caused by hemorrhagic shock following Firearm injury which is Antemortem in nature.

Circumstantial evidence will ascertain whether it was suicidal, accidental or homicidal in nature.”

7. The place where Chandervir sustained the injury was searched and an empty cartridge was recovered and hence seized. The Self Loading Rifles issued to the deceased, Ct.B.N.Hazara and Ct.Sube Singh were also seized. The personal belongings of the deceased were searched and anti-depressant medicines, namely: Riazepam, Risperidone and Risprocone were found in his kit box and were seized.

8. On September 27, 2004 Comdt.A.K.Singh, prepared a report in respect of the incident, relevant portion whereof reads as under:-

“6. FULL DETAILS OF THE CASE:

On 24/09/2004 at about 1210 hrs, when OP party of Ex-BOP Tarakpur, “E”Coy this unit, consisting of No.89142142 CT Sube Singh (Comdr), No.90173397 CT Chandvir Singh and No.97187057 CT B N Hazra, returning back from OP duty after its completion, CT Chandvir Singh of the party received a gunshot injury from his personal weapon i.e. SLR in a accidental fire incident……

COMMENTS OF THE COMMANDANT:-

I, personally visited place of occurrence and enquired from CT Chandvir Singh when he was conscious and also enquired the incident in detail. It appears to be a case of accidental fire, in which No.9173897 CT Chandvir Singh sustained fatal injury due to firing from his service rifle i.e. SLR Butt No.423 Body No.CR-3909. All out efforts were made to save the deceased, but could not succeed.” (Emphasis Supplied)

9. On September 27, 2004 DIG, Station Headquarters BSF, Paniasagar convened a Staff Court of Inquiry to enquire into the circumstances under which the deceased had sustained the bullet injury on September 24, 2004. During the Court of Inquiry the department examined 21 witnesses. Highlighting that at the Court of Inquiry the petitioners i.e. the wife and the children were not associated, we proceed to briefly note the depositions of such witnesses whose testimony is relevant to the controversy involved in the present petition, which we immediately highlight is the denial of such benefits to the petitioners which would be available to them if the death of Chandervir was treated as accidental while on duty. The respondents had treated it to be a case of suicide and hence have denied the insurance benefit under Seema Parhari Beema Yojana in sum of Rs.9 lakhs, Extraordinary Family Pension and an ex-gratia compensation as per policy in sum of Rs.5 lakhs. We highlight that family pension is being disbursed.

10. SI Sahay Sanga, Post Commander, witness No.1, deposed regarding the facts relating to the deceased being removed from the spot where he was injured first to the dispensary at Kadamtala and thereafter to the Sub-Divisional Hospital at Dharamnagar. Certain portions of the deposition need to be extracted by us.

They are as under:-

“Q1. How was the general behavior of Ct Chandvir Singh?

A1. Normal.

Q2. Did Const. Chandvir Singh report any of his problem or grievances to you during his stay in the post?

A2. No.

Q3. Was he taking his meals regularly in the post? If so, did he take/or carry his breakfast on 24 Sept 04 before leaving for OP duty?

A3. Ct Chandvir Singh was taking his meals regularly. Even on 24 Sept 04 before leaving for OP duty in the morning he had his breakfast in the langer (Mess).

….

Q6. Did Ct Chandvir Singh remain sick?

A6. He at time reported of low blood pressure and used to visit local doctor at Rajnagar, Tarakpur, namely Dr.Chakraborty.

…

Q8. Did unit CMO visit the BOP for medical checkup/treatment of tps? If so, when did he visit last?

A8. Dr. S.K. Mishra, CMO visited the post for medical treatment he last visited 04 Apr 04.”

(Emphasis Supplied)

11. HC T.T.Joseph, witness No.2 also deposed facts relating to the deceased being removed first to the dispensary at Kadamtala and thereafter to the Sub-Divisional Hospital at Dharmanagar. Relevant portions of his testimony which need to be extracted and noted read as under:-

“…..During 2003 while the unit was deployed in Soura, Srinagar (JandK), Const Chandvir Singh appeared to be suffering from some neurological problem. On many occasions he would suddenly get up from sleep in the midst of night and would start saying that he was to go for duty even though he actually returned from duty some time bell before going to sleep. For this ailment he went on leave many times while in Srinagar and as per him took treatment from same civil doctor in his home town. For last one year there was marked improvement in his behavior and recently he was quiet normal…On 24 Sept 04 I was performing the duties of PI NCO. On 23 Sept 04 I was on Ambush at Ambush point No.II (also OP No.II) alongwith 4 other pers wef 231730 hrs to 240600 hrs. It was the OP party of Ct Sube Singh comprising of Ct Chandvir Singh and Ct B N Hazra relieved our Ambush Party at 0600 hrs on 24 Sept 04. At the time of charge handing/taking our at OP No.II, Ct Chandvir Singh was in absolute normal condition. There was no sign of any depression etc seen/noted in him…..I alongwith Post Cdr, Ct Sube Singh and Ct Radha Krishan accompanied injured Const Chandvir Singh to Govt. Dispensary Kadamtala…..Since Ct Sube Singh, who is also nursing assistant, had told me not to let him close his eyes, I kept on talking to him and asked as to what happened. At this Ct Chandvir Singh said “Me gir gaya tha”…..

QUESTIONS BY THE COURT

Q1. Was Ct Chandvir Singh taking his food/meals regularly?

A1. Yes.

Q2. Did he take his breakfast in the morning before leaving the post for OP duty on 24 Sept 04?

A2. Yes he took his breakfast on 24 Sept 04. I hereby produce the diet attendance register before the Court. The Court having verified the entries returned the said document to the witness.”

(Emphasis Supplied)

12. Girija Kumar Das, witness No.3, deposed that on September 24, 2004 at about 12.05 P.M. he was present in his tea estate when he heard the sound of firing.

When he went in the direction from where sound of firing had come he saw the deceased lying injured on the ground. He arranged a vehicle to remove the deceased to a hospital. It is relevant to note following portion of the deposition of the witness:-

“…..On enquiring from the 02 BSF pers who were present at the PO, they told that the injured person got slipped and a shot was fired from his personal wpn (ie by Ct Chandvir Singh from his personal wpn)….”

13. HC Lal Singh, witness No.4, deposed that the SLR found lying on the ground at the place of occurrence at a distance of 2-2 feet from the deceased had been issued to the deceased. It is relevant to note following portion of the deposition of the witness:-

“….QUESTION BY THE COURT

….

Q6. Did you notice any unusual behavior in Ct Chandvir Singh during your stay in the BOP or just before 24 Sept 04?

A6. He was absolutely normal. He used to have regular food and sound sleep as his bed was next to mine in jawan barrack.” (Emphasis Supplied)

14. Ct.Anchal Kumar, witness No.6, deposed that he and the deceased used to live in the same barrack and that the bed of the deceased was adjacent to his bed. It is relevant to note following portion of the deposition of the witness:-

“….Ct Chandvir Singh was living with me in same barrack and my bed was adjacent to his bed. Also HC Lal Singh was having his bed next to Ct Chandvir Singh bed on the other side. During my stay in BOP Tarakpur or even other wise in the Coy I never found Ct Chandvir Singh behaving in an abnormal fashion. As far as remember he even did not take medicines regularly as he was not sick or suffering from any ailment. He was never seen in depression or anxiety. He did take regular meals and used to have sound sleep. Even on couple of days prior to 24 Sept 04 he was normal and had sound sleep and proper food.”

(Emphasis Supplied)

15. Asstt.Comdt.Mukesh Kumar, witness No.8, deposed having conducted a general inquiry into the incident and relevant would it be to note his answers to questions Nos.2, 3 and 4, which read as under:-

"….

Q2. Did Const Chandvir Singh reported of any of his grievances to you?

A2. No Const. Chandvir Singh never reported of any grievances whatsoever to me during my tenure in E Coy or any entry exists in the Coy grievances register. The court verifies the entries in said register and return the same to the Witness.

Q3. Was he reported of suffering from any ailment/disease?

A3. No.

Q4. When did the unit medical officer last visited your E Coy before the firing incident took place on 24 Sept 2004? Did he also visit BOP Tarakpur?

A4. Dr S K Mishra, CMO 18 Bn BSF visited E Coy on 31 Aug and 01 Sept 04. He also visited BOP Tarakpur."

16. Ct.B.N.Hazara, witness No.10, deposed the circumstance under which they found the deceased lying injured and relevant portion of his testimony reads as follows:-

"….On 24 Sept 04 OP Party of OP No.II comprising of Ct. Sube Singh, Ct Chandvir Singh and myself relieved OP No.II headed by HC T T Joseph at about 0600 hrs. At about 241150 hrs another OP Party headed by Ct Jagannath and 02 others relieved us at OP No.II. Our party left for BOP Tarakpur on Post. It takes around 20-25 min along the IBB road, to reach BOP Tarakpur while returning to BOP after the OP duty I was leading the party whereas Ct Sube Singh (OP Cdr) was in the middle and Ct Chandvir Singh was at the end. There was a gap of 20-25 feet between each other….At about 1210 hrs while the OP party reached near a hut which is by the side of IBB road approx 400 yards short of BOP Tarakpur, I

heard sound of a gunshot behind me from a very near distance. Since there was sharp bend/curve at the place, I could see only Ct Sube Singh, Ct Chandvir Singh saying “Hazara Jaldi awo, Chandvir girgaya” Immediately both of us ran towards Ct Chandvir Singh was lying on the road on his back and face upwards….There was a bullet injury on his stomach with some blood marks….”

17. Ct.Sube Singh, witness No.11, deposed in terms similar as Ct.B.N.Hazra.

18. Dy.Comdt.Nitin Arora, witness No.12, deposed having prepared the report dated September 27, 2004, relevant extract whereof has been extracted by us in para 8 above and relevant portion of his deposition as a witness which needs to be extracted and noted, reads as follows:-

“QUESTIONS BY THE COURT

Q1. Did Ct Chandvir Singh ever report for any of his personal grievances to your HQ? If so, what was the grievances and how was it redressed?

A1. As per available records, Ct Chandvir Singh never report any grievances to Bn HQ.”

19. Dr.S.K.Mishra, Chief Medical Officer of the 18th Bn., witness No.13, deposed facts relating to the medical condition of the deceased before and after the incident in question and relevant portion of the testimony of this witness reads as foll0ws:-

“…I alongwith ASI/Phrm Surendra Bhat of 18 Bn BSF accompanied Shri A K Singh, Comdt 18 Bn BSF to Sub-Div Hospital at Dharmanagar…On arriving of the said hospital at about 1345 hrs, I went to the emergency were Ct Chandvir Singh was admitted….The individual was wincing with pain and producing sound “Aahw Aahw” or words to that effect. His eyes were closed and clinically he appeared to have toxic looks and pale. I asked his name and he uttered his name. Then I asked him to open his eyes and look at me. He looked at me and I also asked him to put out his tongue in order to ascertain the degree of coma. The patient put out his tongue abruptly. He was de-hydrated. I further asked him as to how he got the bullet injury and his reply was “Muze pata nahi” or words to that effect. In order to probe the cause of bullet injury, I asked the same question repeatedly but his

answers always remained the same ie “Mujhe pata nahi”….I then met the treating surgeon Dr Ajay Saha and the Supdt of the Sub-Div Hospital, Dharmanagar in order to ascertain the clinical status of the patient and further management. It was made clear to me that his condition was very clinical and that he should be immediately evacuated since the hospital did not have adequate infra structure/Surgical instruments/anaesthetizes to deal with such cases. On informing the condition of the patient, Sh A K Singh, Comdt requisitioned hepter for speedy evacuation to military Hospital Mashimpur (Silchar). Since by there the weather was again getting packed up with thick clouds I tried to explore the possibility of evacuating the patient to RMG Hospital, Kalashahar which is at a distance of 1 hour drive, as the patient was to be suggested to immediate surgical intervention. However the surgeon Dr Lashkar of RGM Hosp KLS expressed his inability telephonically to operate upon the patient, as it was a bullet injury involving multiple organs and also his assistant surgeon was on leave as stated by him. He also suggested the patient to be evacuated to Silchar Medical College immediately. The hepter was to arrive Helipad Baghbasa, Dharmanagar at 1550 hrs, as such the patient was discharged from Sub-Div Hospital Dharmanagar and the patient was shifted to Helipad Ground by ambulance at 1535 hrs. En-route the patient was stable, responding to verbal Command and patient was contently getting up to urinate as he had urge to urinate due to catheter being intact in the bladder. I asked him to lie-down and made him to understand that he could intimate while lying down in the stretch. Meanwhile he was being closely monitored by me and given necessary life saving drugs. At about 1600 hrs, the hepter arrived but after hovering around Dharmanagar it went back without landing at Bag Basa helipad. At this Comdt 18 Bn BSF impatiently tried to contact Air force authorities Khumbigram, but the Air force another ties told the hepter would be able to make the next sortie only on the next day morning (ie 25/04/04). At this Juncture Comdt 18 Bn BSF directed to proceed to Silchar alongwith the patient, but when I went to the ambulance, if found the condition of patient suddenly getting deteriorating and he was then gasping for breath. I immediately administered necessary emergency medicines and rushed to Dharmanagar Sub-Div Hospital. At about 1730 hrs he was re-admitted. I requested the surgeon to wheeling the patient to OT, as we had ample chances of loosing him, as he

abruptly lost his consciousness. The surgeon was very reluctant but finally agreed to operate upon the case in consultation with the anesthetist who in turn refused due to limited stock of N2O and O2 liquids….Arrangements were also made to get the N2O Cylinders from RGM hospital KLS….During the personal at about 2040 hrs before the N2O and O2 cylinders to be arranged, the patient Ct Chandvir Singh breath his last for want of surgical intervention.

QUESTION BY THE COURT

…

Q3. Did Const Chandvir Singh ever reported for above ailment before you or was he ever treated for depression in unit MI Room of 18 Bn BSF?

A3. Ct Chandvir Singh never reported with symptoms of depression neither he was treated for same at unit hospital, as per the records.

Q4. What was the medical category of Chandvir Singh as per records of 18 Bn BSF?

A4. He was medical Cat SHAPE-1."

20. ASI/PH Surender But, witness No.14, deposed in terms identical as Dr.S.K. Mishra; pertinently, Surender But also deposed that the deceased could not be operated upon at the hospital at Dharmanagar due to non-availability of N2O and O2 gases at the hospital.

21. Dr.Ajay Saha, witness No.15, deposed that he attended to the deceased at the hospital at Dharmanagar and the facts pertaining to the medical condition of the deceased while at the hospital at Dharmanagar. Relevant portion of his testimony reads as follows:-

"I, Dr Ajay Saha, am serving in Dharmanagar Sub- Divisional Hospital on deputation for last one and half months. I am a general surgeon. Once patient namely Chandvir Singh of BSF (18 Bn BSF) age approx 34 years, Paniasagar was admitted at aforesaid hospital in emergency ward at about 1 PM on 24 Sept 04. I attend the patient on call. He was having history of fall and accidental fire arm

injury. His condition was very very critical….At 6 PM on 24/09/2004, the patient was brought back to Dharmanagar Sub-Divisional Hospital with the history that the hepter did not land at Dharmanagar, so seeing no alternative that they had brought the patient back. The condition of the patient was very grave. He was in a gasping state. So resuscitation treatment was started. As there was no alternative so I suggested Dr Mishra to put the patient for emergency operation with risk. Dr.Mishra consented for the operation immediately necessary arrangement for the operation started this hospital was not having sufficient O2 Cylinder and N2O cylinders at that time to undertake the prolonged operation as stated by DrSubash Ranjan Das, anesthesiologist so requisition for O2 N2O and one nitrous oxide cylinder was made to RGM Hospital by us. BSF authorities by then were making efforts to get the aforesaid cylinders from RGM Hospital KLS. We were ready to start the operation with available O2 and nitrous oxide but unfortunately the patient expired at about 08.40 PM….”

22. Dr.Manindra Kumar Malakar, witness No.15, deposed having conducted the post-mortem of the deceased and explained what he meant by the expression “point blank”with reference to the entry point of the bullet in the body of the deceased as follows: -

“”POINT BLANK” means that the firing occurred from a distance which is not more than 6” from the target but it can be fired by keeping contact with the Target/Body.”

23. Dr.Subrata Das, witness No.18, deposed that on September 24, 2004 he attended the deceased at the Primary Health Centre, Kadamtala, Tripura and relevant would it be to note that he deposed:-

“….On 24 Sept 04 at about 1230 hrs one BSF personal namely Const Chandvir Singh was brought to primary Health Centre Kadamtala by some of his colleagues as a case of gunshot injury and was described to be of accidental nature….”

24. R.P.Kukreti, witness No.20, deposed facts pertaining to attempts made to remove the deceased to Silchar, as also volunteered personal information statedly received by him from petitioner No.1 i.e. the wife of the deceased, as follows:-

"….In the mean time, while unit was trying to establish communication with NOK (wife) Smt Parvesh Rani, at the known address/Telephone Number of the injured Const Chandvir Singh. Coincidentally Mrs Parvesh Rani (NOK) W/o Ct Chandvir Singh contacted me from her mobile phone No.01251321 and during the conversation, she informed me that Ct Chandvir Singh was suffering from the problem of sleeplessness/insomnia and had earlier undergone medical treatment for 03 months in Rohtak Medical College during 2003. Now he was again complaining of the same problem to her since past 2-3 days. So she had advised him (her) husband on telephone 2 to 3 days back to take required Medicare…."

25. SI Paramjit Ghose, witness No.21 who had investigated the incident pertaining to the FIR No.19/2004 PS Dharmanagar deposed that investigation conducted by him resulted in his submitting a report that the deceased had committed suicide by firing at himself from the Self Loading Rifle issued to him, and in respect of which opinion formed by him, relevant portion of his testimony reads as follows:-

"QUESTION BY THE COURT ….

Q2. During investigation how could you reach to a conclusion that it was a case of suicide and not a "Murder" or "Accidental fire"?

A2. (a) On the day of incident ie 24 Sept 04 the weather was clear and the PO place is pucca metalled road and was not slippery. As such chances of Ct Chandvir Singh falling down can be ruled out.

(b) The safety mechanism of SLR 7.62mm rifle is such that until and unless the safety catch is in "R"position and trigger is pressed, the rifle will not fire.

(d) As per the statement of some of the witnesses, the magazine was found lying near by the rifle of Ct Chandvir Singh and one live round (Amn) was also found inside the chamber when the said rifle was cleared. Had it been on accidental rifle, the chances of another round getting loaded in the chamber of the said rifle after the first shot, is bleak. Also witnesses near by po at the time of incident saw Ct Chandvir Singh falling on the ground after they had heard sound of gunshot.

(e) According to postmortem examination report there was slight elevation of the exit wound in comparison to the entry wound. Had it been an accidental fire then the exit wound ought to have been on higher elevation then the entry wound and in upward direction.

(f) As per the statements of some of the witnesses at the time of incident weather was clear, road was dry and Ct Chandvir Singh was wearing Jungle boot (Shoes), as such chances of slippery/falling down so as to have impact on the weapon leading to accidental fire can be ruled out.

(g) As per the statements of some of the witnesses, at the time of incident Ct Chandvir Singh was carrying nothing other than his rifle and amn, as such chances of Ct Chandvir Singh getting disbalanced to fall down is rare. Also the chances of the rifle hitting the surface with sufficient impact to cause accidental fire from weapon like SLR in the instant case can be rule out beyond doubt.

(h) Considering the length of SLR magazine the location of entry wound on the body of Ct Chandvir Singh, chances of accidental fire can be ruled out, as because had it been an accidental fire the wounds would have been anywhere on the upper side of the abdomen, whereas the wound was in the lower abdomen and from the point blank range, as per post mortem report.

(i) As per the statement of witnesses who were nearby the PO at the time of incident, prior to the sound of gunshot, none of them heard any sound of any object what-so-ever falling on the road.

(j) The general tendency of a person at the time of falling is to place his palms on the object (in this case “Road’) to save other parts of his body. But in the instant case it was found that Ct Chandvir Singh did not sustain any injury/abrasions on his palms but got some abrasions on the left fore arm. On the other hand, had he been holding his rifle with his hand, the question of hitting the said bullet on the lower part of his abdomen due to accidental fire does not arise. From the aforesaid deductions the possibility of accidental fire in the instant case is ruled out beyond doubt.

The following points/information are suggestive of that the instant case is not a Murder Case:-

(a) There was no enmity in between Const Chandvir Singh and Ct B N Hazra or in between Ct Chandvir Singh and Ct Sube Singh.

(b) Both Ct Sube Singh and Ct B N Hazra made all sincere efforts to evacuate injured Ct Chandvir Singh to hospital for his treatment.

(c) The Gunshot wound was from “Point blank Range” whereas all of them were walking maintaining sufficient distance from each other (approx 20 feet).

(d) There was not hot altercation among them just before the firing.

(e) From the time of incident and up to the death, Ct Chandvir Singh spoke to some witness but never he made any allegations against anybody in general and Ct Sube Singh and Ct B N Hazra in particular.

(f) Ct Chandvir Singh was suffering from some mental depression for quiet sometime.

(g) As per FSL (Ballistic Expert) report, the firing was done from weapon i.e. SLR 7.62 mm Butt No.423, body No.CR-3909 which was personal weapon of Ct Chandvir Singh and was in his possession at the time of incident.

Also as the sound of gunshot was heard from nearby distance and also as per the postmortem report wherein fire arm used was from a “Point Blank Range”, as such possibility of firing by a shipper (ANE) across the border at Ct Chandvir Singh, is ruled out. On the other hand, the EFC was also found from nearby the PO.”

26. Based on the evidence led at the Court of Inquiry, report submitted was that Chandervir had committed suicide. Relevant portion of the findings reads as under:-

“4. From the statement of witnesses, postmortem examination report, forensic examination report and from circumstantial evidence following was revealed:-

(a) On the day of incident ie 24 Sept 04 the weather was clear and the PO place is pucca metalled road and was not slippery. As such chances of Ct Chandvir Singh falling down can be ruled out.

(b) The safety mechanism of SLR 7.62mm rifle is such that until and unless the safety catch is in “R”position and trigger is pressed, the rifle will not fire.

(c) As per the statement of some of the witnesses, the magazine was found lying near by the rifle of Ct Chandvir Singh and one live round (Amn) was also found inside the chamber when the said rifle was cleared. Had it been on accidental rifle, the chances of another round getting loaded in the chamber of the said rifle after the first shot, is bleak.

(d) Witnesses nearby PO at the time of incident saw Ct Chandvir Singh falling on the ground after they had heard sound of gunshot.

(e) According to postmortem examination report there was slight elevation of the exit wound in comparison to the entry wound. Had it been an accidental fire then the exit wound ought to have been on higher elevation then the entry wound and in upward direction.

(f) As per the witnesses, at the time of incident weather was clear, road was dry and Ct Chandvir Singh was wearing Jungle shoes, as such chances of slippery/falling down so as to have impact on the weapon leading to accidental fire can be ruled out.

(g) At the time of incident Ct Chandvir Singh was carrying nothing other than his rifle and amn, as such chances of Ct Chandvir Singh getting dis-balanced to fall down is rare. Also the chances of the rifle hitting the surface with sufficient impact to cause accidental fire from weapon like SLR in the instant case can be rule out beyond doubt.

(h) Considering the length of SLR magazine the location of entry wound on the body of Ct Chandvir Singh, chances of accidental fire can be ruled out, as because had it been an accidental fire the wounds would have been anywhere on the upper side of the abdomen, whereas the wound was in the lower abdomen

and from the point blank range, as per post mortem report.

(k) As per the statement of witnesses who were nearby the PO at the time of incident, prior to the sound of gunshot, none of them heard any sound of any object whatsoever falling on the road.

(l) The general tendency of a person at the time of falling is to place his palms on the object (in this case “Road’) to save other parts of his body. But in the instant case it was found that Ct Chandvir Singh did not sustain any injury/abrasions on his palms but got some abrasions on the left fore arm. On the other hand, had he been holding his rifle with his hand, the question of hitting the said bullet on the lower part of his abdomen due to accidental fire does not arise. From the aforesaid deductions the possibility of accidental fire in the instant case is ruled out beyond doubt.

5. The following points/information are suggestive of that the instant case is not a Murder Case or firing by a snipper (anti-national element) from near the IBB road:-

(a) There was no enmity in between Const Chandvir Singh and Ct B N Hazra or in between Ct Chandvir Singh and Ct Sube Singh.

(b) Both Ct Sube Singh and Ct B N Hazra made all sincere efforts to evacuate injured Ct Chandvir Singh to hospital for his treatment.

(c) The gunshot wound was from “Point blank Range” whereas all of them were walking maintaining sufficient distance from each other (approx 20 feet).

(d) There was no hot altercation among them just before the firing. (e) From the time of incident and up to the death, Ct Chandvir Singh spoke to some witness but never he made any allegations against anybody in general and Ct Sube Singh and Ct B N Hazra in particular. (f) Ct Chandvir Singh was suffering from some mental depression for quiet sometime. (g) As per FSL (Ballistic Expert) report, the firing was done from weapon i.e. SLR 7.62 mm Butt No.423, body No.CR-3909 which was personal weapon of Ct Chandvir Singh and was in his possession at the time of incident.

(i) Witnesses nearby the PO heard the sound of gunshot near the PO at the time of incident, as such a snipper (ANE) firing from a distance at Ct Chandvir Singh can be ruled out. Besides this even as per PM examination report the firing was done from “Point Blank Range”. On the other hand, the EFC was also recovered from nearby the PO.”

27. Relevant portions of the opinion on which the findings aforesaid were returned reads as follows:-

“….After corroboration of all the circumstantial evidences as well as the post mortem report, it appears that Ct Chandvir Singh committed suicide with his personal weapon from point blank range while he was in a depressed state of mind. (witness No.13,14,15,16, appx “P”and inference drawn by the court).

….

Doctors of Sub-divisional Hospital attending the injured Ct Chandvir Singh did not handle the case effectively as they neither had adequate infra structure/medical Eqpts in the hospital nor the Anesthesiologist had ensured adequate stock of Nitrous oxide and oxygen cylinders to undertake the emergency case like that of Ct Chandvir Singh. (witness No.13,14,15 and inference drawn by the Court)

Dr K Sen Laskar, Surgeon of RGM Hospital Kailashahar showed inability to accept the patient (Ct Chandvir Singh) on flimsy ground with the plea that his assistant surgeon was away on leave. (witness No.13 and 15)

There was sufficient ie more than 07 hours at the disposal of the doctors of sub-divisional Hospital Dharmanagar to operate upon the injured Ct Chandvir Singh but due casual/reluctant attitude on part of doctors, the patient was deprived of the required treatment and he kept on battling for his life and finally breath his last at 2040 hrs (8.40 PM) for want of required surgical intervention. (witness No.13 and inference drawn by the court).

…..

OPINION OF THE COURT

The Court after having examined all the relevant witnesses and evidences tendered on the record, is of the opinion that No.90178397 Ct Chandvir Singh of E Coy 18 Bn BSF deployed at BOP Tarakpur, North Tripura, while returning from OP duty at 1205 hrs on 24 Sept 04 committed suicide by firing from his personal weapon SLR 7.62 mm IAI, butt No.423 regd No. CR-3909, resultantly he succumbed to his injury on the same day at 2040 hrs (8:40 PM) at Sub-divisional Hospital Dharmanagar, North Tripura, for which nobody is to be blamed.

The Court further recommends the following:-

….

(i) That a dedicated helicopter of BSF may be stationed at appropriate place so that services of the same is made available on call, to evacuate dangerously/seriously ill case to bigger hospital without loosing time.

(j) That Health department of Tripura Govt may be approached to equip the district/Sub-div Hospitals with adequate infrastructure and surgical equipments in order to enable the doctors to effectively attend and treat the Emergency Cases giving specific reference of the instant case."

(Emphasis Supplied)

28. Accepting the findings returned at the Court of Inquiry, treating Chandervir having committed suicide, thereby denying the benefits claimed by the petitioners as noted by us in para 9 above, the respondents released only the family pension and such other sums as were payable treating the death as a result of suicide. The claims were rejected as per letter dated November 07, 2005 by DG BSF.

29. In the writ petition, the petitioners, who are the wife, the minor son and the minor daughter of the deceased claim that the findings returned at the Court of Inquiry that Chandervir committed suicide be quashed and they be paid Rs.9 lakhs under Seema Prahari Beema Yojana and Rs.5 lakhs ex-gratia payable by treating the death as accidental while on duty as also extraordinary family pension.

30. It is apparent that our duty is to decide the core issue i.e. whether the departmental action in treating the death of Chandervir as a case of suicide is correct; and if not why.

31. We proceed by highlighting once again that the petitioners were not associated at the Court of Inquiry and we cannot but resist highlighting at the outset, a fact which strikingly glares in the eyes that the findings of the Court of Inquiry is a mirror reflection of the report submitted by SI Paramjit Ghose and for which we would highlight to the reader of our opinion to revisit paragraphs 25 and 26 above, where we have extracted the testimony of SI Paramjit Ghose and the findings at the Court of Inquiry and to bring out the point of cut-copy-paste, we juxtapose the two.

(a) On the day of incident ie 24 Sept 04 the weather was clear and the PO place is pucca metalled road and was not slippery. As such chances of Ct Chandvir Singh falling down can be ruled out.	(a) On the day of incident ie 24 Sept 04 the weather was clear and the PO place is pucca metalled road and was not slippery. As such chances of Ct Chandvir Singh falling down can be ruled out.
(b) The safety mechanism of SLR 7.62mm rifle is such that until and unless the safety catch is in “R”position and trigger is pressed, the rifle will not fire.	(b) The safety mechanism of SLR 7.62mm rifle is such that until and unless the safety catch is in “R”position and trigger is pressed, the rifle will not fire.

(d) As per the statement of some of the witnesses, the magazine was found lying near by the rifle of Ct Chandvir Singh and one live round (Amn) was also found inside the chamber when the said rifle was cleared. Had it been on accidental rifle, the chances of another round getting loaded in the chamber of the said rifle after the first shot, is bleak.	(c) As per the statement of some of the witnesses, the magazine was found lying near by the rifle of Ct Chandvir Singh and one live round (Amn) was also found inside the chamber when the said rifle was cleared. Had it been on accidental rifle, the chances of another round getting loaded in the chamber of the said rifle after the first shot, is bleak.
Also witnesses near by po at the time of incident saw Ct Chandvir Singh falling on the ground after they had heard sound of gunshot.	(d) Witnesses nearby PO at the time of incident saw Ct Chandvir Singh falling on the ground after they had heard sound of gunshot.
(e) According to postmortem examination report there was slight elevation of the exit wound in comparison to the entry wound. Had it been an accidental fire then the exit wound ought to have been on higher elevation then the entry wound and in upward direction.	(e) According to postmortem examination report there was slight elevation of the exit wound in comparison to the entry wound. Had it been an accidental fire then the exit wound ought to have been on higher elevation then the entry wound and in upward direction.

(f) As per the statements of some of the witnesses at the time of incident weather was clear, road was dry and Ct Chandvir Singh was wearing Jungle boot (Shoes), as such chances of slippery/falling down so as to have impact on the weapon leading to accidental fire can be ruled out.	(f) As per the witnesses, at the time of incident weather was clear, road was dry and Ct Chandvir Singh was wearing Jungle shoes, as such chances of slippery/falling down so as to have impact on the weapon leading to accidental fire can be ruled out.
(g) As per the statements of some of the witnesses, at the time of incident Ct Chandvir Singh was carrying nothing other than his rifle and amn, as such chances of Ct Chandvir Singh getting disbalanced to fall down is rare. Also the chances of the rifle hitting the surface with sufficient impact to cause accidental fire from weapon like SLR in the instant case can be rule out beyond doubt.	(g) At the time of incident Ct Chandvir Singh was carrying nothing other than his rifle and amn, as such chances of Ct Chandvir Singh getting dis-balanced to fall down is rare. Also the chances of the rifle hitting the surface with sufficient impact to cause accidental fire from weapon like SLR in the instant case can be rule out beyond doubt.

(h) Considering the length of SLR magazine the location of entry wound on the body of Ct Chandvir Singh, chances of accidental fire can be ruled out, as because had it been an accidental fire the wounds would have been anywhere on the upper side of the abdomen, whereas the wound was in the lower abdomen and from the point blank range, as per post mortem report.	(h) Considering the length of SLR magazine the location of entry wound on the body of Ct Chandvir Singh, chances of accidental fire can be ruled out, as because had it been an accidental fire the wounds would have been anywhere on the upper side of the abdomen, whereas the wound was in the lower abdomen and from the point blank range, as per post mortem report.
(i) As per the statement of witnesses who were nearby the PO at the time of incident, prior to the sound of gunshot, none of them heard any sound of any object what-so-ever falling on the road.	(k) As per the statement of witnesses who were nearby the PO at the time of incident, prior to the sound of gunshot, none of them heard any sound of any object whatsoever falling on the road.

(j) The general tendency of a person at the time of falling is to place his palms on the object (in this case “Road’) to save other parts of his body. But in the instant case it was found that Ct Chandvir Singh did not sustain any injury/abrasions on his palms but got some abrasions on the left fore arm. On the other hand, had he been holding his rifle with his hand, the question of hitting the said bullet on the lower part of his abdomen due to accidental fire does not arise. From the aforesaid deductions the possibility of accidental fire in the instant case is ruled out beyond doubt.	(l) The general tendency of a person at the time of falling is to place his palms on the object (in this case “Road’) to save other parts of his body. But in the instant case it was found that Ct Chandvir Singh did not sustain any injury/abrasions on his palms but got some abrasions on the left fore arm. On the other hand, had he been holding his rifle with his hand, the question of hitting the said bullet on the lower part of his abdomen due to accidental fire does not arise. From the aforesaid deductions the possibility of accidental fire in the instant case is ruled out beyond doubt.
The following points/information are suggestive of that the instant case is not a Murder Case:-	5. The following points/ information are suggestive of that the instant case is not a Murder Case or firing by a snipper (anti-national element) from near the IBB road:-
(a) There was no enmity in between Const Chandvir Singh and Ct B N Hazra or in between Ct Chandvir Singh and Ct Sube Singh.	(a) There was no enmity in between Const Chandvir Singh and Ct B N Hazra or in between Ct Chandvir Singh and Ct Sube Singh.

(b) Both Ct Sube Singh and Ct B N Hazra made all sincere efforts to evacuate injured Ct Chandvir Singh to hospital for his treatment.	(b) Both Ct Sube Singh and Ct B N Hazra made all sincere efforts to evacuate injured Ct Chandvir Singh to hospital for his treatment.
(c) The Gunshot wound was from “Point blank Range” whereas all of them were walking maintaining sufficient distance from each other (approx 20 feet).	(c) The gunshot wound was from “Point blank Range” whereas all of them were walking maintaining sufficient distance from each other (approx 20 feet).
(d) There was not hot altercation among them just before the firing.	(d) There was no hot altercation among them just before the firing.
(e) From the time of incident and up to the death, Ct Chandvir Singh spoke to some witness but never he made any allegations against anybody in general and Ct Sube Singh and Ct B N Hazra in particular.	(e) From the time of incident and up to the death, Ct Chandvir Singh spoke to some witness but never he made any allegations against anybody in general and Ct Sube Singh and Ct B N Hazra in particular.
(f) Ct Chandvir Singh was suffering from some mental depression for quiet sometime.	(f) Ct Chandvir Singh was suffering from some mental depression for quiet sometime.
(g) As per FSL (Ballistic Expert) report, the firing was done from weapon i.e. SLR 7.62 mm Butt No.423, body No.CR-3909 which was personal weapon of Ct Chandvir Singh and was in his possession at the time of incident.	(g) As per FSL (Ballistic Expert) report, the firing was done from weapon i.e. SLR 7.62 mm Butt No.423, body No.CR-3909 which was personal weapon of Ct Chandvir Singh and was in his possession at the time of incident.

Also as the sound of gunshot was heard from nearby distance and also as per the postmortem report wherein fire arm used was from a “Point Blank Range”, as such possibility of firing by a shipper (ANE) across the border at Ct Chandvir Singh, is ruled out. On the other hand, the EFC was also found from nearby the PO.	(i) Witnesses nearby the PO heard the sound of gunshot near the PO at the time of incident, as such a snipper (ANE) firing from a distance at Ct Chandvir Singh can be ruled out. Besides this even as per PM examination report the firing was done from “Point Blank Range”. On the other hand, the EFC was also recovered from nearby the PO.

32. Now, while it was permissible for the Court of Inquiry to have considered and relied upon the report submitted by SI Paramjit Ghose, but it is not acceptable that the Court of Inquiry would sing like a canary and would indulge in a cut-copy-paste exercise. It was not expected to act like a copycat. The application of mind had to be reflected independent of SI Paramjit Ghose’s report.

33. Now, both, SI Paramjit Ghose and the Court of Inquiry have heavily relied upon the fact that anti-depressant medicine was recovered from the personal belongings of the deceased. The Court of Inquiry has also relied upon the testimony of HC T.T.Joseph that the deceased was suffering from neurological problems in the year 2003 and the testimony of R.P.Kukreti of what he claimed petitioner No.1 having told him i.e. that her husband was suffering from depression.

34. We find that the Court of Inquiry has not even noted and hence has not discussed the effect of the testimony of SI Sahay Sanga, HC Lal Jawan, Ct.Anchal Kumar and Asstt.Comdt.Mukesh Kumar who categorically deposed that in the recent past they had found the deceased to be a normal human being and there was nothing abnormal in his behaviour which was noted. The deceased was taking food as all others would, the deceased would sleep arise and awake as all others would, the deceased was performing duties as all others would and was behaving as all others would. There was no evidence led as to who had

recommended antidepressant drugs to the deceased, which we may note are also liberally used by those who suffer from a sleep disorder. The Court of Inquiry did not address itself to the question whether it was possible that due to some sleep disorder the deceased procured the drugs found in his personal kit box. The Court of Inquiry did not even address itself to the question as to with what frequency, if at all, the deceased was regularly consuming the medicine or was it that the deceased had procured the drugs, to be used as standby as and when he could not sleep properly and thus would consume a pill or two to have a sound sleep.

35. The Court of Inquiry has just not considered the initial response soon after the incident of the officers concerned i.e. firstly the letter written by Dy.Comdt.Nitin Arora to the office incharge PS Dharmanagar, contents whereof have been noted by us in paragraph 4 above wherein the initial response was to inform that the deceased had suffered an accidental gunshot wound; the signal dated September 25, 2004, contents whereof have been noted in paragraph 6 above; the report dated September 27, 2004 prepared by Comdt.A.K.Singh, contents whereof have been noted by us in paragraph 8 above, all of which refer to the fatal shot being accidental. The Court of Inquiry has also ignored the testimony of HC T.T.Joseph who stated that immediately after the incident the deceased had told him that he i.e. the deceased had slipped.

36. Unfortunately, the Court of Inquiry failed to clinically evaluate the post-mortem report of the deceased, which in our opinion throws considerable light on the subject: Whether the deceased intentionally shot himself with the Self Loading Rifle issued to him i.e. committed suicide.

37. We have noted in paragraph 7 above, the relevant extracts of the post-mortem report and would highlight that the situs of bullet and trajectory of the projectile, piercing internal organs of the deceased show that the entry point of the bullet is at the epigastric region of the abdomen, and the exit point is between the 10th and the 11th rib, rupturing the spleen of the deceased. Human anatomy guides us that the 10th and the 11th rib, emanating from spinal cord, do not attach themselves with the sternum zone i.e. their ends are loose. The trajectory of the bullet from the entry point to the exit point needs to be understood with reference to the fact that

the stomach cavity and the thoracic cavity of the human body is akin to an oval shaped cylindrical object. The bullet had made an entry at the epigastric region and had traversed the stomach cavity moving towards the back, en-route rupturing the spleen and after damaging the 10th and the 11th ribs made the exit. This means that the bullet travelled somewhat diagonally inside the stomach cavity and along a path making a 40 degree or a 45 degree angle with reference to the base line being drawn, with reference to the trajectory line of the bullet along a straight line from the point of entry of the bullet towards left side of the body of the deceased. To fire a shot like this, the barrel has to be held in the absolute opposite direction to the base line. Meaning thereby, the journey of the bullet would be at an angle of 180 degree.

38. It was not disputed before us that the height of the deceased was 5'7". Now, with reference to the trajectory of the bullet inside the body of the deceased, with the entry point being at the epigastric region i.e. below the sternum and the exit being at the back where the spleen is situated in between the 10th and the 11th rib, to fire the shot at himself, the deceased had to point the barrel of the Self Loading Rifle at himself, meaning thereby that the butt of the Self Loading Rifle, where the trigger is situated had to be in the opposite direction of the body of the deceased. The length of the Self Loading Rifle is 3'9". The length from the butt to the trigger is 14" to 15"; facts which are not on record but have been noted by us in Court after summoning a CRPF Constable on duty in the Delhi High Court who was armed with a Self Loading Rifle. To be shot in the manner, keeping in view the reach of the arm of a man having height 5'7", the deceased had to outstretch himself and if we may use the expression, contrive to put his finger on the trigger: with arms outstretched and the body leaning over and then shoot at himself.

39. Why would the deceased, who as per the respondents committed suicide, resort to such a strategy of contrivance to kill himself when the simplest thing would be to rest the butt on the ground - point the barrel either at the chest where the heart is situated or in the forehead where the brain is situated or below the chin and simply pull the trigger; we highlight that as per Modi's Medical Jurisprudence and Toxicology it stands recorded that where the weapon of offence is a long barreled weapon, in a case of suicide the most convenient is to place the

muzzle in the mouth or under the chin.

40. The Court of Inquiry is always conducted, if the force personnel is dead, in the absence of the legal heirs, whose valuable civil rights are involved and thus it is expected that at a Court of Inquiry a 360 degrees evaluation of the evidence is done and all possible alternatives have to be considered before conclusions are arrived at.

41. It is true that a Writ Court would not re-evaluate evidence, but we highlight that it would be the duty of a Writ Court to consider whether the primary adjudicator has considered all the relevant evidence, and where it is found that relevant evidence or relevant circumstances have been ignored, to then reconsider the matter to find out the effect of the relevant evidence and circumstances; doing so in the instant case, we find that the respondents have acted mechanically and have ignored relevant evidence and circumstances requiring the Court of Inquiry findings to be set aside.

42. We would be failing not to highlight that the Court of Inquiry has overlooked a very vital aspect in the present case i.e. whether it was negligence or delay in giving effective treatment to the deceased which was the direct and the proximate cause of the death.

43. We begin by highlighting that except for the spleen, no internal organ of the deceased was damaged. The rupturing of the spleen by itself is not fatal if timely medical assistance is rendered, for if the damaged organ is not repaired or surgically removed, death is the result of internal bleeding; and indeed this has happened in the instant case. The Court of Inquiry acknowledged the fact that, (Quote):- “there was sufficient ie more than 07 hours at the disposal of the doctors of sub-divisional Hospital Dharmanagar to operate upon the injured Ct Chandvir Singh but due casual/reluctant attitude on part of doctors, the patient was deprived of the required treatment and he kept on battling for his life and finally breath his last at 2040 hrs (8.40 PM) for want of required surgical intervention.”

44. This opinion of the Court of Inquiry is based upon the testimonies of Dr.S.K.Mishra and Dr.Ajay Saha which brings out that it was the lack of nitrous

oxide and oxygen gas at the Sub- Divisional Hospital due to which the deceased could not be operated upon. Attempt to air lift the deceased to Silchar Medical College failed due to weather being inclement and for which the authorities concerned could do nothing, but if the Sub-Divisional Hospital was equipped with nitrous oxide i.e. an anaesthetizes and oxygen, the deceased could have been saved. The deceased, as noted herein above, died after 8 hours and 35 minutes of the incident and it is obvious that he bled himself to death. The testimony of Dr.S.K.Mishra brings out that Dr.Laskar, the surgeon concerned at RMG Hospital who was contacted initially refused to operate upon the deceased citing non-availability of the assistant surgeon, but when the helicopter could not land to remove the deceased to Silchar Medical College Hospital, Dr.Ajay Saha agreed to operate upon the deceased at the Sub-Divisional Hospital at Dharmanagar but due to lack of N2O and O2 could not perform the operation.

45. This aspect of the matter cannot be ignored when we have before us as a petitioner, the widowed wife of a constable with two minor children to be brought up in life and receiving family pension, commensurate with the service rendered by the deceased, and as told to us during hearing Rs.3172/- per month, as against a pension of approximately Rs.9,000/- per month which she would receive as extraordinary family pension. We highlight that we have brought out as aforesaid with reference to the lack of medical facilities to bring home the point that the deceased could have been saved, and not to bring out that compassion requires relief to be granted.

46. For the reasons stated herein above the writ petition is allowed and a mandamus is issued to grant extraordinary family pension to the petitioners with effect from the date they are entitled to and after adjusting the ordinary family pension paid to pay the past arrears within 12 weeks from date of this decision as also to pay such other amounts as would be payable by treating Chandervir’s death to be accidental while on duty within the same period, and if not paid within 12 weeks, to be paid with interest @9% per annum reckoned from 12 weeks from the date of this decision till date of payment.

47. Costs allowed to the petitioners and against the respondents in sum of Rs.10,000/-.