
(2016) 07 RAJ CK 0055

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10154 of 2013

Alka Devi @ Geetbala

APPELLANT

Vs

Motor Accident Claims Tribunal

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Citation : (2017) AAC 1507 : (2017) 1 ACC 503 : (2016) 165 AIC 916 : (2016) 3 DNJ 1384 : (2017) 1 RLW 591 : (2016) 4 TAC 479 : (2017) 1 WLC 305 : (2016) 3 WLN 287

Hon'ble Judges : Mr. Sangeet Lodha, J.

Bench : Single Bench

Advocate : Mr. R.C. Joshi, Advocate, for the Appellant; Mr. Mukul Singhvi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Sangeet Lodha, J.—This petition is directed against order dated 16.12.11 of the Motor Accident Claims Tribunal ("Tribunal"), Ratangarh, District Churu, whereby an application preferred by the petitioner, seeking correction of her name in the award dated 27.8.97 passed in Claim Petition No.27/94 as "Alka Devi" in place of "Geetbala" stands rejected.

2. The relevant facts are that the petitioner's father died in a motor vehicle accident occurred on 10.10.93. The petitioner along with her mother and brothers filed claim petition before the Tribunal against the second and third respondent herein. In the claim petition, the name of the petitioner was mentioned as "Geetbala".

3. The claim petition was allowed by the Tribunal vide judgment dated 27.8.97 and an award of compensation quantified at Rs.6,08,000/- was passed in favour of the claimants and against the second respondent. The claimants were also held entitled for interest on the amount of compensation @ 15% from 8.4.94 till the realisation.

4. Aggrieved thereby, the second respondent preferred an appeal before this court, which was partly allowed vide judgment dated 3.7.02 and besides the second respondent, the Insurance Company was also held jointly and severally liable for payment of compensation awarded in favour of the claimants. The order passed by the Tribunal regarding payment of interest was modified and it was ordered that the amount awarded by the Tribunal shall carry interest @ 9% per annum from the date of application till realisation.

5. The claimants filed application for execution of the award. The Insurance Company deposited the amount of compensation along with interest a sum of Rs.17,41,603/-. The Tribunal as per the disbursement order passed, forwarded the cheques issued in the names of the claimants for deposit of the amount in the saving bank account/FDRs to the Branch Manager, State Bank of Bikaner & Jaipur ("SBBJ"), Hanumangarh with the stipulation that the interest accrued shall be paid to the claimants quarterly. Out of the amount deposited as aforesaid, an amount of Rs.1,00,000/- was directed to be kept in FDR in the name of the claimant Geetbala for a period of five years. The Branch Manager, SBBJ, requisitioned original documents from the petitioner. In the documents produced by the petitioner, her name was mentioned as "Alka Devi" and since the cheque was issued by the Tribunal in the name of "Geetbala", the Bank declined to prepare the FDR. Likewise, the SBBJ also refused to release the FDR of the petitioner of Rs.20,000/- prepared as per the directions of the Tribunal, already matured, lying with the bank. In these circumstances, the petitioner preferred an application under Section 151, 152 & 153 CPC for correction of her name appearing in the award, which stands rejected by the Tribunal observing that the provisions of Section 151 CPC are not attracted inasmuch as, the matter already stands decided and further that the claim petition was filed disclosing the name of the petitioner herein as "Geetbala" and therefore, the award passed in her favour, does not suffer from any error, which can be rectified invoking the provisions of Section 152 CPC. The court observed that the provisions of Section 153 CPC are applicable only where any error in the proceedings in a suit is required to be amended and since the matter already stands decided, the provisions of Section 153 are also not applicable. Hence, this petition.

6. Learned counsel appearing for the petitioner contended that "Geetbala" was the nickname of the petitioner and thus inadvertently her name was mentioned in the claim petition as "Geetbala". Learned counsel submitted that the petitioner is the only daughter of her deceased father and her name in the ration card and secondary school examination certificate has been mentioned as "Alka Devi". Learned counsel submitted that there is no reason as to why the name of the petitioner as mentioned in the secondary school examination certificate be not treated to be conclusive. Learned counsel submitted that the Tribunal has seriously erred in refusing to make necessary correction in the award taking into consideration the material placed on record by the petitioner. Learned counsel submitted that the Tribunal has seriously erred in rejecting the application preferred by the petitioner observing that the provisions of Section 151 and 153

cannot be invoked after decision of the claim petition and the provisions of Section 152 are not applicable inasmuch as, there is no error in the award which needs to be rectified. Learned counsel submitted that the petitioner cannot be rendered remedy less and therefore, appropriate direction deserves to be issued to the Tribunal for rectification of the award and/or for issuing a fresh cheque in the petitioner's actual name i.e. "Alka Devi".

7. Mr. Mukul Singhvi, learned counsel appearing for the respondent no.3 submitted that the Insurance Company has no objection if the name of the petitioner in the award passed is rectified and fresh cheque is issued in her favour, as prayed for.

8. I have considered the submissions of the learned counsel for the parties and perused the material on record.

9. As per provisions of Section 168 of the Motor Vehicles Act, 1988 (for short "the Act of 1988"), after holding an inquiry into the claim, the Tribunal is required to make an award determining amount of compensation which appears to it to be just and specify the person or persons to whom compensation shall be paid and thus, the Tribunal is empowered to pass the appropriate order distributing the compensation amount between claimants considering their dependency.

10. Section 169, which deals with procedure and powers of Tribunal provides that in holding an inquiry under Section 168 for determination of claim for compensation subject to any rules that may be made in this behalf, the Tribunal may follow such summary procedure as it thinks fit.

11. Section 176 empowers the State Government to make rules for the purpose of carrying into effect the provisions of Sections 165 to 174 of the Act of 1988.

12. It is to be noticed that in exercise of the powers conferred under the various sections of the Act of 1988 including Section 176, the State Government has framed Rajasthan Motor Vehicles Rules, 1990 (for short "the Rules"). The Chapter X of the Rules, deals with the Claims Tribunals.

13. Rule 10.27 of the Rules, makes provision that the power vested in the Civil Court under Sections 30, 32, 34, 35 (a), 75(a) and (c), 76, 77, 94, 95, 132, 133, 144, 147, 148, 149, 151, 152 & 153 may be exercised by the Claims Tribunal so far as they may be applicable, subject to the provisions of Section 174 of the Act of 1988. By virtue of Rule 10.28, the provisions of Order 21 CPC, are also made applicable to the proceedings before the Claims Tribunal. That apart, it has been specifically provided that in so far as the Act and the Rules make no provision or make insufficient provision, the relevant provisions of the Code of Civil Procedure, 1908 shall so far as may be, apply to the proceedings before the Claims Tribunal. Suffice it to say that for the purpose of carrying into effect the provisions of Sections 165 to 172 which deal with the determination of claim by the Claims Tribunal, award of interest and compensatory cost so also the

disbursement of the amount of compensation, the Tribunal is not precluded from invoking the provisions of CPC so far as may be applied to the proceedings before the Tribunal.

14. Rule 10.22 of the Rules, deals with judgment and award of compensation to be passed by the Claims Tribunal. Clause (3) of Rule 10.22 empowers the Tribunal to make appropriate provisions regarding the investment of the amount compensation deposited where it is payable to a woman or person under legal disability. Further, as per clause (4) of Rule 10.22, where an application is made to the Claims Tribunal in this behalf or otherwise, the Tribunal is satisfied that on account of the negligence of the children on the part of the parents or on account of variation of the circumstances of the dependant or for any other sufficient cause, an order of the Tribunal as to distribution of any sum paid as compensation or as to manner in which sum payable to any such dependant is to be invested, applied or otherwise dealt with ought to be varied, the Tribunal may make such order for variation of the former order as it thinks fit just in the circumstances of the case.

15. It is true that after passing the award, the Tribunal becomes functus officio and it cannot review the determination for entitlement of compensation under the award. But then, so far as the order directing disbursement of the amount of compensation already determined is concerned, it is open to be reconsidered and varied by the Tribunal where it is found just in the circumstances of the case in the interest of the claimants.

16. It is to be noticed that in the instant case, the prayer made by the petitioner was only for alteration in the name of the person held entitled for compensation and not for the change of the identity of the person entitled for compensation. It is the duty of the Tribunal to ensure that the compensation awarded by it is disbursed to the rightful claimant in the manner directed by it and therefore, during the execution of the award passed, if the petitioner had applied for the correction of her name in the award on the strength of the documentary evidence, there was absolutely no reason for the Tribunal to decline to entertain the application made. In the considered opinion of this court, the Tribunal is empowered to grant such amendment invoking the power under the Rules 10.22(4) & 10.27 of the Rules as also the inherent power under Section 151 & 153 of Civil Procedure Code, 1908, while executing the award, which in no manner affects adversely the rights of the non claimants.

17. For the aforementioned reasons, the writ petition is allowed. The order impugned dated 16.12.11 passed by the Tribunal is set aside. The application preferred by the petitioner for change of the name in the award, shall be decided by the Tribunal on merits, on the basis of the documents produced by her, expeditiously in any case, within a period of two weeks from the date of receipt of certified copy of this order. The period of five years since passing of the order for disbursement has already expired and therefore, on the application of the petitioner being allowed, instead of directing the deposit of the amount in FDR,

the amount of compensation awarded shall be paid to the petitioner straight away by way of account payee cheque/pay order/demand draft. Further, on the application preferred by the petitioner for correction of her name in the award being allowed by the Tribunal, the SBBJ, Branch Hanumangarh, shall release the petitioner's FDR of Rs.20,000/- along with the interest accrued, forthwith. No order as to costs.

18. A copy of the order may be sent to the Motor Accident Claims Tribunal, Ratangarh, forthwith.