

(1990) 10 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 1845 of 1987

Janabai Govind Surve

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-10-1990

Acts Referred:

Bombay Motor Vehicles Taxation Rules, 1959 — Rule 306(3)

Constitution of India, 1950 — Article 14

Motor Vehicles Act, 1939 — Section 110, 111A, 92A

Citation : (1991) ACJ 294 : AIR 1991 Bom 333 : (1991) 3 BomCR 1 : (1991) 93 BOMLR 887

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : A.R. Shinde, Assistant Government Pleader and Miss Indu C. Shroff, for the Appellant;

Judgement

D.R. Dhanuka, J.—By this petition, the petitioner has challenged the impugned order dated 19th March 1987 passed by the respondent No. 2 -- Motor Accident Claims Tribunal, Greater Bombay ("the Tribunal", for short) -- in M.A.C.T. Application No. 2217 of 1984 and also the validity of Rule 306(3) of the Bombay Motor Vehicles Rules, 1959 ("the Rules", for short), inasmuch as the said order dated 19th March was based on the said Rule. The short facts leading to the filing of this petition are as under.

2. On 3rd April 1984, son of the petitioner -- the late Dnyaneshwar Govind Surve -- was knocked down by a car at Chowpatty, Bombay, and he was admitted to J. J. Hospital by the police. The said Dnyaneshwar died at about 10 p.m. on the same day, i.e. 3rd April 1984. The petitioner-mother filed an application for compensation, being M.A.C.T. Application No. 2217 of 1984, claiming an amount of compensation of Rs. 2,00,000/-. A sum of Rs. 15,000/- was paid to the petitioner u/s 92A of the Motor Vehicles Act, 1939 ("the Act"), for short". The respondents Nos. 5 and 6 are the brothers of the deceased and other sons of the petitioner. The respondents Nos. 7 to 10 are the sisters of the deceased and the

daughters of the petitioner. It was held that the petitioner alone was entitled to receive the amount of compensation. The said application was settled for a sum of Rs. 60,000/-, with no order as to costs. Out of the said sum of Rs. 60,000/-, a sum of Rs. 15,000/- was liable to be deducted being the amount already paid to the petitioner as stated earlier, leaving a balance of Rs.45,000/-.

3. On 19th March 1987, the petitioner made an application to the Tribunal for releasing the entire balance of Rs. 45,000/-deposited by the respondent No. 4 -- Insurance Company with the Tribunal on the ground that the Petitioner owned a pan-bidi shop, that the petitioner had given the said pan-bidi shop for conducting to a third party as the petitioner had no capital for conducting the said shop by herself. The petitioner expressed her desire to utilise the said amount in the said business, etc. By the impugned order dated 19th March 1987, the Tribunal came to the conclusion that the petitioner being illiterate, the entire amount of Rs. 45,000/- could not be released to the petitioner. The Tribunal directed that out of the remaining amount of Rs. 45,000/- paid by the Insurance Company, a sum of Rs. 15,000/- be paid to the petitioner and the remaining amount of Rs. 30,000/- be invested with a nationalised bank for six years and interest be paid to the petitioner on the invested amount quarterly.

4. The Tribunal in its order referred to the guidelines laid down by the Division Bench of this Court in the case of Nav Bharat Builders and another Vs. Pyarabai and others, . In this judgment, the Division Bench of this Court consisting of C.S. Dharmadhikari and V. S. Kotwal, JJ., directed that the Tribunal must see that the dependents of the deceased do not fall prey to machinations or be subjected to deception or fraud and to assist and guide especially illiterate and ignorant dependents after passing of the award. Reference was made to Rule 306(3) and Rule 306(4) of the Rules made by the authority and guidelines were laid down to the effect that while passing an award for compensation, the Tribunal must safeguard the interest of the dependents for whose benefit the award was made. In this judgment, the Division Bench of this Court also referred to the guideline laid down by the High Court of Gujarat in the case of Muljibhai and Another Vs. United India Insurance Co. Ltd. and Others, . In substance, it was laid down that the Claims Tribunal should invariably order the amount of compensation awarded to the minor to be invested in a long term fixed deposit at least till the minor attained his/her majority. It was directed that in the case of illiterate women, the Claims Tribunal should follow almost the same procedure. It was held in the above cases as a guideline that if a lump sum amount was required for effecting purchases of any movable or immovable property; such as, agricultural implement, rickshaw, etc. the Claims Tribunal may consider such a request after making sure that the amount was or would be actually so spent. Certain other directions were also given by the High Court of Gujarat in the above-referred case in Muljibhai Ajarambhai Harijan v. Union India Insurance Co. Ltd. In the above-referred-Bombay judgment, our High Court generally agreed with the very same directions and guidelines which were formulated by High Court of Gujarat in the above-referred case, In the above-referred judgment, the validity of Rule

306(3) was not impugned. Thus the Hon"ble Division Bench was not concerned with the vires of the Rule impugned in this petition.

5. However, in this petition, a challenge is made to the validity of Rule 306(3) of the Rules. The said Rule was not under challenge before the Division Bench of this Court and the question of the vires of this Rule has arisen before this Court for the first time as far as I have been able to ascertain it with the help of Counsel. The petitioner and her Advocate have chosen not to remain present. Mr. Shinde, learned Counsel for the respondent No. 1 -- State has given me some assistance in the matter. I think that instead of adjourning this matter again and again, I should dispose of this petition on merits, as the question arising in this matter is likely to arise again and again before the Tribunal.

6. Rule 306(3) of the Rules reads thus :--

"306. (3) Where any lump-sum deposited with the Tribunal is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman or such person during his disability in such manner as the Tribunal may direct, and where a quarterly payment is payable to any person under the legal disability, the Tribunal may, of its own motion or any application made to it in this behalf, order that the payment be made during the disability of the person concerned, to any dependent of the injured or heir of the deceased or to any other person whom the Tribunal thinks best fitted to provide for the welfare of the injured or the heir of the deceased."

The said Rule is an amended Rule and came into force on 31st January 1983. The said Rule was made in exercise of power u/s 111A of the Act. Section 111A of the Act reads as under:--

" 111A Power of State Government to make rules. -- A State Government may make rules for the purpose of carrying into effect the provisions of Sections 110 to 110E and, in particular, such rules may provide for all or any of the following matters, namely:--

(a) the forms of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;

(b) The procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;

(d) the form and the manner in which an appeal may be preferred against an award of a Claims Tribunal; and

(e) any other matter which is to be, or may be, prescribed."

7. In my judgment, there can be no dispute in respect of the validity of Rule

306(3) of the Rules in so far as it imposes duty on the Tribunal to direct investment of the compensation amount receivable by a person under a legal disability. If a minor or a lunatic or any other person under a legal disability is entitled to be compensated, it is undoubtedly the duty of the Tribunal to protect such person, who cannot protect himself or herself. In matters before Civil Court also, when decrees are passed in respect of certain amounts which are receivable by minors, directions are given for investment of such amounts and such amounts are payable with accrued interest to such minors on attaining their majority. The question which arises in this petition is as to whether Section 111A of the Act authorises the State Government to frame a rule so as to impose restrictions on power of a female claimant, who is an adult, to deal with the amount of compensation as she deems fit. The question arising before me is as to whether the woman claimant can be placed on par with a person under a legal disability. The question is whether the Court or the Tribunal can impose itself the duty of becoming a super guardian of an adult person who is not a person under disability, even if she is an illiterate. No restriction is imposed on a male claimant to receive and deal with the amount of compensation, if he is adult, as he deems fit. I have no doubt in my mind that Rule 306(3) was framed with a laudable object of preventing certain malpractices which must have come to the notice of the authorities and because of the apprehension that the amount of compensation may not reach the hands of the woman claimant. The petitioner in this case is an illiterate woman. The question which I have to ask myself is whether the sole claimant of the amount, who is a major, can be deprived of her right of receiving the amount of compensation immediately on the same being deposited with the Tribunal, or should it be the discretion of the Tribunal to release the amount of the principal or interest in her favour by installments. I am concerned only with the constitutional validity of the impugned Rule. In my judgment, Rule 306(3) is clearly discriminatory and is arbitrary in so far as it imposes restrictions on a woman claimant to withdraw the amount of compensation to which she is entitled. The Tribunal may perform this duty by handing over the cheque of the amount of compensation in the hand of the widow or the illiterate woman concerned and take some such precaution. If the woman claimant desires to avail of the amount of compensation in lump sum at one time, can it be said that it is in the interest of justice to confer protection on her, or rather impose protection on her against her desire, by withholding the payment of such amount to which she is entitled an compensation under the Fatal Accident, Claims Act? The said Rule was made in exercise of the power conferred on the State Government u/s 111A of the Act. Section 111A authorises the State Government to prescribe the forms of application for claims for compensation and prescribes the procedure to be followed by a Claims Tribunal in holding of an inquiry and prescribes the form and the manner in which an appeal may be preferred against an award of a Claims Tribunal, etc. In my judgment, the impugned Rule is ultra vires the enabling power of the State Government u/s 111A of the Act in so far as it imposes a restriction or creates a disability on the absolute right of a female claimant to receive and deal with the

amount of compensation as she deems fit. In my judgment, the said Rule is clearly discriminatory and arbitrary, as it discriminates between male claimants and female claimants, both of whom are major. If a person is entitled to compensation and if such person is not a person under disability, no restriction can be imposed on the absolute right of such a person to receive the amount of compensation to which he or she is entitled forthwith. The impugned Rule is manifestly arbitrary and violative of Article 14 of the Constitution of India. The impugned Rule discriminates the adult claimants merely on ground of sex and violates the right to equality. The impugned Rule does not confer special protection in favour of the women claimants but creates a disability. No differentiation can be made between an illiterate female claimant and an illiterate male claimant, both of whom may be major. There is no nexus whatsoever between the differentiation made and object of the Rule or the enabling Act sought to be achieved. The impugned portion of the Rule is thus violative of the guarantee of equality enshrined in Article 14 of the Constitution. I have, therefore, no hesitation in striking down a portion of the said Rule pertaining to woman claimants. The said offending portion of the Rule is clearly severable. It is hereby declared that Rule 306(3) of the Rules shall not be applied when the amount of compensation is payable to a woman who has attained the age of majority and who is not a person under a legal disability and the impugned Rule is struck down to this extent. If the claimant is a minor, or a lunatic or is any other person under a legal disability, then only Rule 306(3) shall be applied.

8. In view of the above, the impugned order dated 19th March 1987 is set aside. The Motor Accident Claims Tribunal, Greater Bombay (Respondent No. 2), is directed to arrange for encashment of the fixed deposit receipt of the claimants to the Petitioner at the earliest possible. Having regard to the facts and circumstances of the case, there shall be no order as to the cost of the petition.

9. The Prothonotary and Senior Master of this Court shall forward a copy of this Judgment to the Motor Accident Claims Tribunal, Greater Bombay, the Petitioner and the Motor Accident Claims Tribunal, Bar Association.

Order accordingly.