(2014) 03 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 300 of 2009, 2884 and 3659 of 2010

Kapil Lodha APPELLANT

Vs

The Judge, MACT RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 47, 114
Motor Vehicles Act, 1988 — Section 169, 170

Citation : (2015) 1 ACC 407 : (2015) 1 ALLMR 25

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Judgement

M.N. Bhandari, J.—By this writ petition, a challenge is made to the order dated 10.06.2008. In the case of Kapil Lodha, the Motor Accident Claims Tribunal passed an award in favour of the petitioner on 02.09.2005 awarding a sum of Rs. 15,00,870/- with interest @ of 6 per cent. An amount of Rs. 2,00,000/- was ordered to be given in cash and rest of the amount was directed to be deposited in four FDRs to become mature after every five years. An application was moved to encash the FDR, which was declined by the Tribunal.

2. I find that during pendency of writ petition, one FDR became due and must have been encashed by the petitioner and second would become due in the next year itself, thus 1 do not find that now a direction to release the FDRs should be given.

3. It is, however, necessary to discuss the issue in reference to the judgment of Hon''ble Apex Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . Therein, the Hon''ble Apex Court had issued several directions to the Tribunal to ensure appropriate investments to safeguard the feed from being flittered away by the beneficiaries owing to ignorance, illiteracy and susceptible to exploitation. The following directions were given in Para No. 17 of the said judgment, which are quoted hereunder for ready reference:

"17. In a case of compensation for death it is appropriate that the Tribunals do keep in mind the principles enunciated by this Court in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., in the matter of appropriate investments to safeguard the feed from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptibility to exploitation. In that case approving the judgment of the Gujarat High Court in Muljibhai and Another Vs. United India Insurance Co. Ltd. and Others, , this Court offered the following guidelines:

"(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property such as, agricultural implements, rickshaw, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one Fixed Deposit so that if need be one such F.D.R. can be liquidated."

4. Sub-para (viii) of Para No. 17 of the judgment quoted above directs all the Tribunals to grant liberty to claimant/s to apply for withdrawal in case of an emergency. The directions quoted above are to be born in mind by the Tribunals while passing the award. It is based on the direction in Sub-para (viii) of Para No. 17, invariably applications are filed to withdraw the amount pre-maturely despite fact that no such liberty was granted by the Tribunal at the time of passing of final award. As per the guidelines given by the Hon''ble Apex Court in the case supra, the Tribunal can grant appropriate liberty to the claimant to apply for withdrawal of amount. The question would be as to whether a claimant can do it by making application without a liberty to this effect in the final award and, if that is so, what would be the consequences.

5. The aforesaid issue is required to be considered for the reasons that after passing award, deviation from the direction is nothing but results in review of the award, though power of review does not exists in the Tribunal. If in a given case, a direction to release amount is given on an application without liberty to this effect in the final award, then acceptance of application in those cases would be nothing but an order contrary to the final direction given in the award. It can be done in those cases where Tribunal is having power to review its judgment/order/award and not in those cases where such power does not exist.

6. Whether the Motor Accident Claims Tribunal is having jurisdiction to review its award or order has been dealt with by this Court in the case of Smt. Imliya v. United India Insurance Co. Ltd. & Ors. in SB Civil Writ Petition No. 2404/2005 vide judgment dated 18th November, 2008. After referring the provisions of Motor Vehicle Act and Rules made thereunder, it was found that the Tribunal has not been given power to review its order. The relevant para of said judgment is quoted hereunder:

"The Tribunal as constituted under the Motor Vehicles Act while dealing with the claim application even when having the trappings of the Civil Court, its jurisdiction is specifically defined by the statutory provisions and the rules framed thereunder. So far as the powers of the Civil Court that are vested in the Claims Tribunal and procedure to be followed by the Claims Tribunal are concerned, such aspects have specifically been delineated in Section 169 of the Act and Rule 10.27 and Rule 10.28 of the Rajasthan Motor Vehicles Rules. 1990. Significant it is to notice that the provisions of Section 114 CPC or Order XLVII Rule 1 and CPC, relating to powers of review have not, as such been made applicable to the proceedings before the Claims Tribunal. The Tribunal, in the opinion of this Court, had no jurisdiction to deal with a so-called review application moved under Order XLVII CPC and the impugned order, passed on a so-called review application, cannot be upheld."

7. The perusal of para quoted above shows a reference of Section 169 of the Act of 1988 apart from Rule 10.27 and 10.28 of Rajasthan Motor Vehicles Rules, 1990 (for short "Rules of 1990"), Section 114 of CPC and order XLVII Rule 1 of CPC. The Tribunal has not been given all the powers as exist to the Civil Court and the procedure therein is made summary to expedite the disposal, however, for causing evidence and other related issues, the jurisdiction has been given by applying certain provisions of CPC, which are made applicable. The power of review has not been included in the Rules of 1990. In view of above, it becomes clear that Motor Accident Claims Tribunal is not having power to review its judgment/order/award and if, that is so, they cannot pass any order contrary to the directions in the award. They can, however, correct typographical and error in calculation as it does not amount to review.

8. A further reference of judgment given by the Madhya Pradesh High Court in the case of Uttara Soni and Others Vs. Oriental Insurance Co. Ltd. and Others, is relevant and para Nos. 14 and 15 of the aforesaid judgment are quoted hereunder for ready reference:

"14. The facts in the case of Narayan Lillahare 2007 (2) MPHT 32, warranted the aforesaid verdict and we are in respectful agreement to the same. However, in the instant case it is the insurance company which has preferred an application for review of the order passed by the Claims Tribunal without there being any allegation of fraud. We are afraid that in absence of an allegation regarding compensation being obtained by practising fraud, the insurance company could have invoked the inherent jurisdiction of the Claims Tribunal. We are, therefore, of considered opinion that the Claims Tribunal exceeded its jurisdiction while entertaining the review application filed by the insurance company against the quantum of compensation which was awarded by the Claims Tribunal. Right of insurance company to challenge award on quantum of compensation is not permissible unless leave to contest on all grounds is sought by the insurer under Section 170 of Motor Vehicles Act. If insurer has no right to question quantum of compensation determined then it has no right to seek review of the order for reduction of compensation. It may be mentioned that award was by Mr. S.C. Sinho (as he then was) and has been reviewed by Mr. Vikas Jain who was posted later and without referring to any grounds available under Order 47, Rule 1, Code of Civil Procedure award has been reviewed particularly when Order 47 has no application to proceedings under the Act and Rule 240 of the Madhya Pradesh Motor Vehicles Rules, 1994. As held in the judgments referred above review is permissible if some fraud is played or some other special ground is made out in inherent jurisdiction when order passed is palpably wrong or passed under some misapprehension. But review on the ground of error in the judgment or on merit is not permissible.

15. For the aforesaid reasons, we are of the considered opinion that exercise of inherent power by the Claims Tribunal in absence of the allegation of fraud is bad and deserve to be set aside. Accordingly, we set aside the order dated

16.4.2005, passed by the Claims Tribunal in M.J.C. No. 81 of 2004 and restore the award dated 24.8.2004. No order as to costs."

9. In the case aforesaid, a reference of earlier judgment of the same Court in the case of Narayan Liliahare, 2007(2) MPHT 32 has been given but the jurisdiction to recall the order was give only when the award was obtained by fraud and in such similar circumstances. Therein also, the MP Motor Vehicle Rules are having no provision to give jurisdiction of review to the Tribunal as is the position in the State of Rajasthan. It is otherwise a settled law of the land that review of the order is permissible by the Courts and Tribunal only when such powers are given under the Statute itself and not otherwise. The only exception is the High Court and Supreme Court, which are having inherent power of judicial review.

10. In the background aforesaid, the Tribunal has no authority to entertain the application for issuance of a direction contrary to what had been given in the final award. It can be done only when such liberty is given in the final award in reference of judgment of Hon''ble Apex Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . If the judgment of Hon''ble Apex Court in the case of Mrs. Sushma Thomas is considered in totality then firstly it is not a direction to the Tribunal but only a guideline. Those guidelines are mainly for the safeguard of the compensation by appropriate investment. Accordingly, while issuing the guidelines, the Hon''ble Apex Court considered the various aspects as to what adequate safeguard can be provided to feed from being flittered away by the beneficiaries owing to ignorance, illiteracy and susceptible to exploitation. While giving the directions therein, the Hon''ble Apex Court was cautious to grant liberty to apply for withdrawal of amount in emergency. The Tribunal have been directed to invest it in more than one Fixed Deposit so that if, need be, one of such FDR can be liquidated. The direction to invest in more than one FDR can be given while passing the award and not subsequent to it and in the same way, liberty to apply for withdrawal of FDR can be incorporated in the final award so that any order subsequently would not amount to review but a consequence of the liberty given in the final award itself. The Supreme Court and the High Court while issuing directions or guidelines do not ask any Court to act beyond its jurisdiction and even if power of review does not exist, then also, accept the application which amounts to review or an order contrary to the directions in the award.

11. In view of facts aforesaid, 1 do not find any illegality in the impugned order, rather for the reasons exist for denial of release of compensation prematurely. I am of the opinion that such power does not exists with the Tribunal unless the Tribunal grants liberty to apply for the withdrawal in the case of emergency while passing the final award and otherwise, the Tribunal needs to save feed being flittered away owing to ignorance and susceptibility to exploitation, which is happening now a days.

12. Copy of this order be circulated to all the Motor Accident Claims Tribunal of

State of Rajasthan. The Registrar (Administration) to see the compliance. In view of discussion made above, these writ petitions are dismissed.