

(2000) 03 KAR CK 0107

In the Karnataka High Court

Case No : Civil Revision Petition No. 981 of 2000

Mabu Sab

APPELLANT

Vs

M/s. United India Insurance Company Limited, Bellary

RESPONDENT

Date of Decision : 25-03-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 168 (3)

Citation : (2001) ACJ 409 : (2000) ILR (Kar) 2312 : (2000) 5 KarLJ 142 :
(2000) 3 KCCR 1716

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Ms. R. Jyotifor Sri Y. Lakshmikant Reddy, for the Appellant;

Judgement

1. The revision petitioner along with his wife, was awarded compensation for the death of their son, in MVC No. 18 of 1998 in a sum of Rs. 60,000/- which was settled in Lok Adalat. Out of the said compensation amount, a sum of Rs. 20,000/- is deposited in Vysya Bank for a period of five years in the name of the petitioner, by the order of the Court. The balance of Rs. 40,000/- is said to have been paid to the petitioner.

2. The petitioner made an application for payment of Rs. 20,000/- kept in Fixed Deposit in Vysya Bank to meet the marriage expenses of his daughter, scheduled to be held on 18-2-2000. Along with the application, the marriage invitation card is produced before the Trial Court. The Trial Court rejected the request noting that Rs. 40,000/- is already paid to the petitioner which is available with him and the same could be utilised for the purpose of marriage, besides dwelt upon insignificant and unimportant discrepancies like the age of the petitioner shown as 32 years in the main petition and in the petition filed for withdrawal, it was shown as 43 years; thus suspected the identity of the petitioner. There appears to be an averment made by the petitioner that a sum of Rs. 40,000/- is said to be in deposit, whereas, only Rs. 20,000/- was kept in deposit. By highlighting these minor discrepancies, the Trial Court rejected the petition and held that the

amount of Rs. 40,000/- already paid can be utilised for marriage, placing reliance on the ruling of the Supreme Court in the case of Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., .

3. In paragraph 105 of the said judgment, at page 312, guidelines to be followed by Courts while disbursing compensation, have been laid down for useful reference. The same is stated hereunder:

"(i) The Claims Commissioner should, in the case of minors, invariably order the amount of compensation awarded to minor to be invested in long term fixed deposits at least till the date of 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 Commissioner should follow the procedure set out in (i) above, but if lumpsum payment is required for effecting purchases of any moveable or immovable property such as agricultural implements, assets utilisable to earn a living, the Commissioner 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 the money;

(iii) In the case of semi-literate persons, the Commissioner should ordinarily resort to the procedure set out in (ii) above unless he is satisfied that the whole or part of the amount is required for expanding any existing business or for purchasing some property for earning a livelihood;

(iv) In the case of widows, the Commissioner should invariably follow the procedure set out in (i) above;

(v) In personal injury cases, if further treatment is necessary, withdrawal of such amounts as may be necessary for incurring the expenses for such treatment may be permitted;

(vi) In all cases in which investment in long term fixed deposits is made, it should be on the 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. It should stipulate that the FDR shall carry a note on the face of the document that no loan or advance will be allowed on the security of the said document without express permission; and

(vii) In all cases, liberty to apply for withdrawal in case of an emergency should be available to the claimants.

Government might also consider such investments being handled by promulgating an appropriate scheme under the Unit Trust of India Act so as to afford to the beneficiaries not only adequate returns but also appropriate capital appreciation to neutralise the effect of denudation by inflation".

(emphasis supplied)

4. Wholesome reading of the guidelines laid down pronouncedly emphasises the intention that by and large, beneficiaries and the victims who receive compensation in this country are illiterate and gullible people; when victims receive money in a lumpsum which they had no occasion to see or possess in their lifetime, they would be unable to manage the same properly for their own benefit and it is likely that middlemen eat away a major portion of the money, making the victim to remain in a penurious condition. Therefore, the Supreme Court, in *Muljibhai and Another Vs. United India Insurance Co. Ltd. and Others*, , with a little modification, has laid down the aforesaid guidelines only to protect and advance the interests of the poor and illiterate beneficiaries who receive compensation.

5. A careful reading of the guidelines would disclose that it is not the intention of the Courts that the compensation awarded should be kept out of the hands of the claimants for all times to come, and to be invested in nationalised banks/ Government securities enabling them to have only the benefit of interest and the corpus to be kept intact, untouched and not to be made use of for any useful or beneficial purpose.

6. The Supreme Court, in the decision in *Lilaben Udesing Gohel, Shyamala Shashidharan Nayyar and Others, Pramilaben Narendra Bhai Patel and Others, Ramabhai Shankarbhai Chavda, Lilaben and Others, Kantaben Anil Kumar Patel and Others, Motor Vahan Durghatna Sanghathan, Nadiad and Others and Shardaben Chandubhai Patel and Others Vs. Oriental Insurance Company Ltd. and Others, Hemraj Loduram Rajpur and Another, Nandubhai Ambalal Thakkar and Others, Ganibhai Ambabhai Vora and Another, Kaji Gulam Nabi Sheikh and Others, Gujarat State Road Transport Corpn. and Others, State of Gujarat and Others and Bachusha Dadusha and Others*, , upholding the judgment of the five-Judge Bench of the Gujarat High Court in the case of *Jayantilal Ambalal Parmar Vs. The Gujarat State Road Transport Corporation and Another*, , and disapproved the guidelines laid down by the Gujarat High Court in *New India Assurance Co. Ltd. Vs. Kamlaben Sultansinh Jadav and Others*, , wherein the Court directed that the amount of compensation should be invested in the Life Insurance Corporation of India/General Insurance Corporation of India who should pay interest at 15% on the deposit made, on monthly basis like annuity to the claimants, held thus: (in *Lilaben Udesing Gohel*'s case, *supra*).

"Paragraph 8: One can easily notice the major shift in ideas in the impugned judgment. The thrust in the impugned judgment is on the concept of annuity so as to ensure periodic payment of a fixed amount and to prevent the awarded sum in lumpsum falling into the hands of the claimant as long as possible. In order to ensure periodic payment, which according to the judgment should be quarterly interest calculated at 15% on the total compensation amount, the insurance company itself has been made liable to make the necessary investment either in its own business or in the business of General Insurance Corporation or that of L.I.C. The impugned judgment has shown further caution

for minors who should wait till they are at least 21 and in any case for 10 years from the date of the award. It can be seen that the periodic payment is insisted upon for all claimants irrespective of their capacity to take care of large sums of money. Further, arrangement described above was insisted upon also for payment of the small amount that is generally available on no-fault liability primarily to meet the immediate needs of the victims/heirs.

Paragraph 13: The five-Judge Bench came to the conclusion that the decision of this Court in Union Carbide's case, *supra*, wherein the guidelines laid down in Muljibhai's case, *supra*, were approved had not been brought to the notice of the three-Judge Bench which passed the impugned judgment, i.e., the one in Kamlaben's case, *supra*. It also noticed that the fact that the same guidelines had been reiterated in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , had also not been brought to the notice of the three-Judge Bench. It observed:

"21. In the guidelines laid down by the Hon''ble Supreme Court and the guidelines laid down by the Full Bench of this Court, the insurance company which may have become liable to pay the amount of compensation is required to retain the amount with it. It is obliged to pay the same to the claimants periodically with interest at 15%. This is not the case in the guidelines laid down by the Hon''ble Supreme Court, The guidelines laid down by the Hon''ble Supreme Court requires that the amount of compensation should be deposited in the Tribunal. Thereafter, it is for the Tribunal to regulate disbursement and investment of the amount. Moreover, the guidelines laid down by the Hon''ble Supreme Court take care of all types of cases, wherein even the insurance company may not have been held liable to make payment of the compensation; while in the case of guidelines laid down by the Full Bench of this Court, the guidelines are silent in cases where the insurance company is not made liable to make payment of the amount of compensation and only the owner of the vehicle or the driver is made liable to pay the compensation.

22. The guidelines issued by the Hon''ble Supreme Court take care of the provisions of Section 168(3) of the Motor Vehicles Act, 1988, while, as indicated above, attention of the Full Bench has not been drawn to the provisions of Section 168(3) of the Act, which requires a person liable to make payment of the amount of compensation to deposit the amount of compensation with the Tribunal within 30 days from the date of announcement of the award.

23. In the guidelines laid down by the Hon''ble Supreme Court, emphasis is to protect the interests of minor claimants and the interest of illiterate and semi-literate, as well as the poor claimants. The guidelines laid down by the Hon''ble Supreme Court also apply to literate and other claimants. But in such cases, discretion is left with the Tribunal indicating the circumstances and the manner in which the discretion may be exercised. While in the guidelines laid down by the Full Bench, it is difficult to read that any such discretion is left with the Tribunal. For the aforesaid reasons, there is conflict between the guidelines laid down by

the Hon"ble Supreme Court in the case of Union Carbide Corporation, supra, and again in the case of General Manager, Kerala State Road Transport Corporation, supra. Moreover, this conflict is irreconcilable inasmuch as it would be impossible to implement both the guidelines simultaneously".

Paragraph 14: The five-Judge Bench concluded saying that the guidelines laid down by the Supreme Court as indicated above have to be followed by all Motor Accidents Claims Tribunals. Thus the position in law as it stood before the decision rendered by the three-Judge Bench of the High Court stands restored.

Paragraph 16: Before we part, we must observe that even though the guidelines laid down in Muljibhai's case, supra, have been approved and applied by this Court in the aforementioned two cases, many Motor Accidents Claims Tribunals and even some of the High Courts in other parts of the country do not follow them. We are also told in claims that are settled in or outside the Court or Tribunal, including Lok Adalats or Lok Nyayalayas, these guidelines are overlooked. We would like to make it absolutely clear that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or agreement between the parties, the Court/Tribunal must apply these guidelines. We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the fixed deposit receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the Court/Tribunal which ordered the deposit. This will eliminate the practice of taking loans which may be upto 80% of the amount invested and thereby defeating the very purpose of the order. We do hope that the Courts/Tribunals in the country will not succumb to the temptation of permitting huge withdrawal in the hope of disposing of the claims. We are sure that the Courts/Tribunals will realise their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them. The very purpose of laying down the guidelines was to ensure safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements will be equally shared by the Courts/Tribunals".

(emphasis supplied)

7. A careful reading of the ratio laid down by the Supreme Court in the aforesaid decisions clearly indicates that the Tribunals have to carefully and responsibly exercise their discretion while ordering payment of compensation. The Tribunals will not be serving the cause of justice if they do not exercise their discretion in a meaningful and pragmatic way while complying with the guidelines. It is not the spirit and purport of the guidelines that the claimants have to be denied of the benefit of compensation and that the entire amount should be kept in fixed deposit and only the interest should be permitted to be used. It is also not the mandate laid down in the guidelines that on the mere asking, the entire amount is to be made payable to the claimants. The discretion is to be exercised

judiciously. Payment of compensation to the claimants should always depend upon the genuine need and requirements.

8. The justifiable instances for making lumpsum payment mentioned in para II of the guidelines are only illustrative in nature and they are not exhaustive or conclusive. Sometimes, illiterates or semi-literates or widows may want to purchase an immovable property like agricultural land for making their living, or purchase a house for their shelter, if they are residing in a rented premises, or sometimes want to make lucrative investment, in such cases, the Tribunal has to take into consideration the genuine need and direct payment of the lumpsum. In case of minors, if a minor who passes out Pre-University Course and wants to secure admission to a professional course, if the compensation awarded to him is genuinely and bona fide required for prosecuting his education to advance his career prospects in a better way, it would be totally unwise for the Tribunals to blindly interpret the guidelines that under no circumstance, the amount is to be paid to the minor until he attains majority. It is pertinent to note that in clause (vii) of the guidelines like Henry VIII Clause, it directs that in all cases, liberty to apply for withdrawal in case of an emergency should be available to the claimants.

9. Sometimes, it is seen that the Tribunals direct the entire compensation amount or a very substantial portion thereof to be kept in deposit in a bank for a period of five years or so, making only a paltry payment to the claimants, without judiciously considering the genuineness of the need and requirements. Sometimes the Tribunals direct 50% of the compensation to be kept in deposit and the remaining 50% made payable without any reasonable basis and without properly appreciating the purpose and purport of the guidelines. A wholesome reading of the guidelines and the emphasised intention of the law laid down by the Supreme Court mandates that the Tribunals have to exercise their discretion carefully and see that for a mere asking, the amount should not be paid to the gullible poor claimants and at the same time, if the needs and demand is genuine and beneficial to such requests for full payment should not be denied. It should also be noted by the Tribunals that in the case of widows or aged persons, if a meagre compensation amount is awarded, it is not the intention of the law laid down by the Supreme Court that irrespective of the meagre interest it may fetch which is not even sufficient for one's monthly maintenance, invariably as a rule, it should be kept in deposit. For better enjoyment and better utilisation, if the amounts are requested to be paid, the same is to be granted.

10. It is to be noted that the claimants who receive compensation should not be considered on par with beneficiaries of a trust who have a right to enjoy only the usufructs from the corpus of the trust, without any right over the corpus in any manner. Compensation amount is the individual property of the claimant. Taking into consideration and practical circumstances under which the poor claimants are placed, the Supreme Court has, by way of caution, laid down guidelines for the benefit of the Tribunals for implementing the social and economic legislations

in a purposeful and meaningful way.

11. The Tribunals, while exercising the discretion, have to make an inquiry in the nature of a summary inquiry, not in the strict technical sense which warrants recording of evidence, permitting cross-examination, etc., but in the literal and legal sense. The Tribunals have to ascertain necessary facts by way of affidavits filed by the party if it is a case of purchase of an immovable property like agricultural land or a house, the Tribunal has to insist for filing of affidavits disclosing the property particulars, copies of title deeds, copies of agreements and may also direct payment of compensation amount directly to the vendors; further, the Tribunals should make personal enquiries with the claimants and other relevant persons to ascertain the genuineness and reasonableness of the need. Enquiries for disbursement of compensation contemplated have to be concluded in one/two sittings, without causing harassment to the claimants to roam around the Courts for innumerable adjournments to take their money.

12. In case the amount is directed to be deposited in nationalised banks, the Tribunal should take care that the amount is deposited in a bank in the place of residence/near to the residence of the claimant, if he happens to reside in a different city/town. The Tribunal should also issue necessary directions to the bank not to permit premature withdrawal or borrowal of loans, and on expiry of the tenure of the deposit, a direction should be issued to the bank that without further instructions from the Court, the amount should be made payable to the claimant concerned. Otherwise, a second round of application by the claimant to receive the amount from the fixed deposit would involve substantial and unwarranted expenditure which would be too taxing on the poor claimants.

13. Coming to the case on hand, a reading of the order of the Trial Court discloses that the discretion invested in the Trial Court has not been properly exercised. No convincing reasons are given. The dates of payment of Rs. 40,000/- is not mentioned to appreciate whether it was within a reasonable time range of the scheduled marriage, and whether the said amount was available with him for celebrating the marriage.

14. Marriage has a lot of social and legal significance. It is the solemn and cherished wish of every parent to see that their children are happily married and settled. If the amount was really required for celebrating the marriage, denial of the same would have disastrous consequences. Therefore, the Trial Court should have been more sensitive and responsive to the nature of the request made and should have made a judicious enquiry into the matter, and should have passed the order after taking into consideration all the material facts and circumstances relating to the genuineness of the need and requirements.

15. A reading of the order discloses that a very perfunctory enquiry is made. The petitioner, his wife and daughter were not summoned, and by dwelling on trivial and impertinent discrepancies like difference in age and quantum of the amount in deposit, and suspecting the very identity of the petitioner without making a

proper probe into the matter, rejected the request. A proper enquiry into the matter for consideration of payment of the deposit is necessary. If there is still a need which entitles the petitioner to receive the amount in fixed deposit to clear off any monetary liabilities arising out of the celebration of the marriage, appropriate orders may be passed by the Trial Court after re-hearing the matter, and making requisite enquiries as directed above. Accordingly, the matter is remitted to the Trial Court for fresh enquiry.