(1989) 04 AP CK 0027

In the Andhra Pradesh High Court

New India Assurance Co. Ltd. APPELLANT

Vs

Malapatinaramma and Others RESPONDENT

Date of Decision : 03-04-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 21, 300A

Citation : (1991) 1 ACC 208 : (1989) 3 ALT 109

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Judgement

K. Ramaswamy, J.—One Malapati Ramulaiah died on September 25, 1980 at about 21.30 hours, on Pedalakur-Kaluvay Road due to the rash and negligent driving by the driver of the lorry bearing No. A AP 2448. His widow, the 1st respondent, minor son and father laid the claim u/s 110-A of the Motor Vehicles Act (Act IV of 1939), for short ''the Act'', for a sum of Rs. 44, 200/-. The Tribunal below found that the death was due to rash and negligent driving of the driver, the lorry dashed against a culvert resulting in the instantaneous death of the cleaner Ramulaiah aged 32 years. He was drawing a sum of Rs. 200/- towards salary and batta of Rs. 250/- per month as cleaner of the lorry. Accordingly, the loss of dependency was determined at Rs. 150/- per month and annual dependency at Rs. 1, 800/- and applying 15 years'' multiplier, fixed the dependency at Rs. 27, 000/-. It also awarded a sum of Rs. 200/- towards transport charges; Rs. 1, 000/- towards funeral expenses and Rs. 3, 000/- towards loss of consortium. Accordingly, a total sum of Rs. 31, 200/- was awarded with interest at 6 per cent per annum. Out of the amount so awarded, a sum of Rs. 12, 000/- was awarded to the widow; Rs. 10, 000/- to the son and Rs. 5, 000/- to the father and the widow was directed to receive compensation towards consortium, funeral expenses and transport charges. The amount of Rs. 10, 000/- awarded to the minor was directed to be deposited in a Fixed Deposit till he attains majority. The insurance company is assailing its liability thereof.

2. Mr. Somayajulu, the learned Counsel for the appellant, contends that under

Exh, B-1, insurance policy, the coverage is only of the liability of one cleaner and the driver, no liability was undertaken by the appellant to indemnify the damages for the death of the second cleaner, the deceased being the second cleaner, the contract casts no liability on the appellant to pay compensation. Therefore the grant of compensation is contrary to Exh. B-1 policy. The argument, though is apparently alluring, but lacks factual foundation. There is no evidence that the deceased was the second cleaner though the owner had engaged two cleaners. It is neither pleaded nor any evidence adduced nor argued before the Tribunal below on this point. Therefore, it being a mixed question of law and fact and factual matrix not having been laid in the Tribunal below, I overrule the objection and hold that the deceased is the cleaner and the contract of insurance under Exh. B-1 covers the liability of the insurance company for the death of the deceased cleaner and thereby the appellant is liable to pay the amount awarded.

3. The more serious question raised by Mr. Somayajulu is that despite the direction given by this court, which has become a rule of practice before the Claims Tribunals that on awarding compensation to the dependants of the deceased or the victim and despite opening an account in the nearest nationalised bank or post office convenient to the parties and deposit thereof by the court, the evil of sabotaging the salutary procedure envisaged has not been eradicated. Immediately on deposit the entire amount is being withdrawn annihilating the salutary effect of the evolved procedure to mitigate the hardship to the dependants of the loss of dependency. Therefore, appropriate procedure should be adopted by the courts to see that the amount emanating from the nationalised insurance companies-the public money, would reach the dependants and the dependants must reap the fruits thereof. In that regard, he argued that the procedure of depositing the amount awarded in fixed deposits and to pay interest accrued thereon would nail the unhealthy tendency and the real beneficiaries, viz., claimants would continue to reap the fruit of the compensation awarded by the Claims Tribunals.

4. Mr. Venkatrama Rcddy, learned Counsel for the claimants, contends that once the Tribunal awarded the amount it is the property of the claimants within the meaning of Article 300A of the Constitution; they are entitled to enjoy as owner thereof; the court is devoid of power or jurisdiction to inhibit the claimants from withdrawing the amounts so deposited. The legislature is aware that by virtue of the award u/s 110-B the claimants would be paid the lump sum amount. No procedure was provided as to how the compensation awarded would be utilized. Therefore, the court cannot supplant the law and deprive the valuable right to property of the claimants in their enjoyment as they like.

5. The diverse contentions give rise to an important question Whether the Claims Tribunal under the Act has power and jurisdiction to adopt a procedure as contended for by Mr. Somayajulu?

6. In Bishan Devi v. Sirbaksh Singh 1979 ACJ 496 (SC), relied on by Mr. Somayajulu, Kailasam, J. speaking for the court held that:

It is common knowledge that such helpless and desperate condition is exploited by unscrupulous persons who manage to get away with the bulk of the compensation money if and when the claimants succeed in getting it.

7. In Srisailam Devastanam Vs. Bhavani Pramilamma and Others, the Division Bench of this court (to which I am at Member) in paragraph 50 held that:

The benefits in the award arc not being received in full by the legal representatives of the deceased or the victims of the accident The middlemen and in some cases, the persons involved in the adjudicatory process arc making hay taking advantage of the illiteracy, ignorance and innocence of the legal representatives of the deceased or the victims of the accident. Many of the poor citizens arc ignorant of their right and are not aware of how to vindicate their right and realise the fruits thereof. As a result, a major part of the amount awarded is being knocked off by the middlemen and in some cases the persons involved in the adjudicatory process and only a paltry sum is being received by the legal representatives of the deceased or the victim, as the case may be. With a view to put an end to this pernicious evil percolating into the portals of the courts, to maintain the administration of justice unsullied and to continue to infuse confidence of the public in the administration of justice....

8. This court directed the Claims Tribunal to call upon the claimants to open a Savings Bank Account either in the nearest nationalised bank or post office convenient to them, to give the account number and the Tribunal was directed to deposit the respective shares of the claimants so furnished. This view was reiterated in Polavarapu Somarajyam and Others Vs. Andhra Pradesh Road Transport Corporation, Hyderabad, . In Erukulapati Lakshmisaraswathi and Others Vs. State Bank of India and Others, , another Division Bench of this court (to which also I am a Member), while reiterating the salutary procedure envisaged hereinbefore held that:

Therefore, it has become incumbent on all the Tribunals concerning determination of the compensation, be they Motor Accidents Claims Tribunals or civil courts dealing under the acquisition or requisition Act, etc., to follow the above procedure so that the persistent criticism against the courts would be effectively silenced....

The procedure indicated by this court has been transformed into a rule of practice to be followed by all the Tribunals as a matter of law to direct the parties concerned to open an account in a nationalised bank or the nearest post office convenient to them and to furnish the number of the account to the Tribunal or court and the court or the Tribunal to deposit their respective claim amounts to the said account.

9. This practice is being followed by all the Tribunals in the Slate of Andhra Pradesh.

10. In Spl. Dy. Collector v. Balaiah 1984(1) APLJ 159, this court extended the

rule to the cases relating to land acquisition matters. It was further extended to awards by the labour courts also in another case. The Kerala High Court while agreeing with the ratio of this court appointed a Committee of Judges to envisage the procedure by the Tribunals under the Act in Kerala. Pursuant to its recommendation, the court issued Circular No. 4/86, dated January 25, 1986 directing that the amount due to claimants other than minors or other persons suffering from disability be paid by issuing cheques to the claimant or one of the nominated claimants in the presence of the advocate concerned. The constitutional validity of this circular was challenged in Lilly Victor and Others Vs. Motor Accidents Claims Tribunal, Calicut and Others, , Panpoornan, J., speaking for the court while upholding the rule held thus:

The object of clause (b) of the circular is to effectuate a legal right of the claimants before the Tribunals and to safe guard their right and interest. It is for the sake of public good. It is accepted law that when a power is vested in a public officer or public authority for the purpose of being used for the benefit of persons who arc specifically pointed out, that power ought to be excised and enabling words arc construed as compulsory whenever the object of the power is to effectuate a public good or for the sake of justice.

Accordingly it was held that the circular though was inconsistent with the Civil Rules of Practice, it is mandatory and the Tribunal shall comply with the same. In Gurmit Kaur Vs. Bhim Singh and Others, the Delhi High Court has also directed the insurance company to issue the cheque for Rs. 80, 000/- in the name of the widow and to deposit it with the Registrar of the High Court and the Registrar is directed to issue notice to the widow and the daughters who were directed to withdraw the amount.

11. The practice of defrauding the claimants and having unjust enrichment at the expense of the unfortunate dependants of the deceased bread-winner had received judicial notice in Smt. Umraji Vs. R.C. Bajpai, Therein, despite the request by the widow to make payment to her, the Tribunal issued the cheque in the name of the counsel, Bajpai; the counsel except depositing a paltry sum of Rs. 15, 000/- awarded to the minors, the balance of Rs. 29, 700/- awarded to the widow was not paid to her. A complaint for professional misconduct yielded no fruit. The widow was constrained to bring by a letter to the notice of the Chief Justice which was numbered as C.R.P. u/s US, CPC and despite giving several adjournments and recording the evidence, the full amount was not paid by the advocate. On receiving a part of the amount an application for withdrawal of the complaint to purchase peace though was filed, the court refused to dismiss the revision even consented to by the unfortunate widow and had seen that the full amount was paid. The power u/s 115, CPC was exercised by the court to render justice to the widow.

12. Thus, this civil practice of non-payment of the full amount awarded by the Claims Tribunals to the dependants or victims of the accident has been judicially recognised throughout the country and attempts are being made to nail squarely

this pernicious practice with a desire to see that the compensation awarded would reach the dependants or the victims.

13. When the registry wrote letters to the Claims Tribunals of the procedure being followed pursuant to the rule laid down in Srisailam Devastanam Vs. Bhavani Pramilamma and Others, and the effect there of the replies sent by the Presiding Officers of the Tribunals reveal shocking results, nullifying the salutary effect of the rule. Accounts in advance are being opened, signatures of the parties on blank withdrawal forms are obtained; the withdrawals are, following closely the heels of the deposit made on the same day. In some cases even impersonation is practised. Even the bank officials are also hand in glove for the fraud. Some bank officials are non-cooperative to open the account for deposits not being remaining for some time atleast After discussions with the bank officials, one member suggested to keep the amount in fixed deposits for long times and payment of interest would have longing effect. Thus, the record is replete with endless methods to sabotage the salutary rule laid down by this court and deprivation of the poor, illiterate and unfortunate dependants or victims of the accident are practised remorselessly. The illiterate and poor victims of the accidents have become mere pawns in the hands of unscrupulous persons to have unjust enrichment at the formers'' expense.

14. It is undoubtedly true that on awarding compensation u/s 110-B of the Act, it becomes the property of the claimant within the meaning of Article 300A of the Constitution. There is dichotomy between deprivation of the property and regulation of enjoyment of the property and regulation of enjoyment of the property and adoption of the procedure in the mode of enjoyment of compensation awarded under the Act. The Parliament intends to alleviate the hardship caused to the dependants of the deceased or victims due to rash and negligent driving of public carriages in the public places; expeditious and inexpensive and efficacious procedure has been provided for and power and jurisdiction has been conferred on the Tribunals to award just compensation. Section 92-A manifests its intention to pay compensation even for no fault liability. The term ''just compensation'' is of wide amplitude. The right to life envisioned under Article 21 is not mere animal existence, but full blossomed enjoyment with physical comforts and to enrich personal and intellectual pursuits with cultured life. The procedure established by law for elongating the purpose should be fair, just and reasonable. The theory that the courts cannot Till in the gaps leaving it to the legislature to enact law is a laissez faire relic of past The Constitution of India entrusts to the judiciary as its guardian a responsibility to play its vital role in establishing an egalitarian social order under rule of law. The interpretation of law or establishing the procedure should be to subserve the above constitutional goal of rendering social and economic justice to the people; the purpose of law is to serve the needs of the society and the rules of procedure are handmaids for the purpose of law. The court should fit its rules to the task of serving the society. We do not pick up rules of law as full blossomed flowers from the trees of well laid garden. The Judge in shaping the rules of law must heed

the mores of the day; he has to share the notions of right and wrong prevalent in the community in which he lives. The Judge thereby would consult his own experience; must be conscious of the times and needs with the free exercise of the will in shaping the law; direct the rule to achieve the social purpose or to further the common good and determine the form and language of the rule in a creative act Overseeing the enjoyment of compensation awarded by the Claims Tribunal is a statutory incidental duty as it would see that the compensation awarded would reach in full to the claimant or the victim. The court, thereby, is supplying the law by filling the gaps. When the question is one of supplying the gaps in law, it is not the logical deduction; it is rather of social needs that we are asked for the solution. The Judge as an interpreter of community of its sense of law must supply the omissions; correct the uncertainties and harmonise the results with justice through a method of free decision. In the legal smithy, the rules of procedure are armoury to eradicate the evils in the society and provide succor capable to furnish a weapon for the fight and of hewing a path to justice. Therefore, the rules must be blended in harmony with law in tune with the times to eradicate the evils prevalent in the community. The rules of procedure, thus, should be handmaid to render substantive social justice envisioned in the Constitution and the law. Therefore, providing procedure for reaching the compensation awarded to the claimants or the victim and the mode of enjoyment thereof is not deprivation of the property offending Article 300A nor violates any right to life under Article 21 of the Constitution. It is a statutory duty of a court or Tribunal incidental to the adjudicatory function.

15. The problem could be angulated from the statutory perspective. As stated earlier, Section 110-B empowers the Tribunal to award ''just compensation. The word ''just'' would imply a duty on the Tribunal, after award of compensation, to oversee that the compensation so awarded is received in full measure by the claimants or the victim. It connotes of the equity jurisdiction of the Tribunal. In Muljibhai Ajarambhai Harijan v. United India Insurance Co. Ltd. 1983 AC 37 (Guj), ''Atouufi, J. (as he then was) speaking for the Division Bench of the Gujarat High Court laid down eight rules concerning the payment of compensation awarded by deposit in fixed deposits. In Bishan Devi and Another Vs. Sirbaksh Singh and Others, the Supreme Court in paragraph 19 laid that the necessity for awarding lump sum payment to secure the interest is no longer there after nationalisation of insurance business. Regular monthly payments could be made through one of the nationalised banks nearest to the place of residence of the dependants. Payment of monthly instalments and avoidance of lump sum payment would reduce substantially the burden on the insurer and consequently of the insured. In Nav Bharat Builders and another Vs. Pyarabai and others, C.S. Dharmadhiiari, J.. speaking for the Division Bench of the Bombay High Court held that:

It cannot also be forgotten that provision of payment of compensation was introduced in the Motor Vehicles Act primarily to safeguard interests of the dependants of the deceased. Therefore, it is the duty of the Tribunal to see that the dependants do not fall prey to machinations or be subjected to deceit or fraud. Provision for payment of compensation is part of social security scheme and the dependants cannot be permitted to be robbed by antisocial elements. This is more so, because many times dependants are from lower strata of society, are illiterate and ignorant of their rights and had no chance in life to see or handle such a big amount....

Section 110-B has used the expression ''compensation'' and not damage. It empowers the Tribunal to determine ''just compensation'' and specify a person or persons to whom compensation shall'' be paid..

While determining compensation sometimes it is taken into consideration as how much interest will be earned on the lump sum awarded....

It was further held that the jurisdiction and power conferred upon the Tribunal to award just compensation, are coupled with a duly. While passing an award for compensation, the Tribunal is duty-bound to guard the interest of the dependants for whose benefit it is made. The Tribunal cannot act as an onlooker, but is duty-bound to pass consequential orders to protect the dependants from exploitation, malpractices and misapplication of compensation money. In that regard, the eight rules laid down in Muljibhai and Another Vs. United India Insurance Co. Ltd. and Others, were reiterated. In G.M., Orissa State Road Trans. Corpn. v. Maheswar Rout 1983 ACJ 124 (Ori), Patnaik, J. is also of the same view. It was held thus:

The law intervenes with a view to substituting the pecuniary loss in terms of damages. But the intervention would not be effective and real if such minors and Ors. are not assured that the pecuniary benefits which they would have otherwise enjoyed, if the accident had not taken place, are to be had in future too. It is proper in equity that the Tribunals and courts extend that assurance. The way lies in devising a mode of enjoyment.

In that regard it was directed to deposit part of the amount in fixed deposit The same ratio was also reiterated in Shivalik Agro Poly productus Ltd. v. Jagdish Raj Mago (1986) ACJ 157(HP) :(1985) 2 ACC319 and Rajasthan State Road Transport Corporation v. Pista Aggarwal (1986) 1 ACJ 23 : (1985)1 ACC 520. It was also reiterated by a Division Bench of the Bombay High Court relating to compensation awarded under the Workmen''s Compensation Act, in Vrajlal Laxmidas Ladani v. Legal their so deceased Abdulhasan Sida 1986ACJ916(Gujam) and Vimal Kishan Karle Vs. United India Insurance Company,

16. Thus, the judicial dicta surveyed also is cognizant to eradicate the evil practice and to ensure the procedure to oversee that the compensation awarded is received by the claimant and the fruits thereof are reaped. It is consistent with the purpose of the law and the procedure is to serve the needs of the society and it should be an instrument acting as a catalyst for suppression of the malpractice, exploitation or fraud and also a means to enjoy the fruit thereof

without depleting the corpus. Therefore, I have little hesitation to hold that the courts or the Tribunals are duty-bound as its incidental power of awarding just compensation, to oversee that the amount awarded would be received in full and continued to be enjoyed by the dependants or the victims of the accident. In that regard, the procedure would be as hereunder:

(1) The Tribunal or court should in the case of minors order the compensation awarded to be invested in long term deposits till date of the minor attaining majority; the interest so accrued may be directed to be paid to the guardian or next friend or in case of no necessity, to reinvest the same to accelerate the estate of the minor;

(2) The Tribunal shall direct the claimants/victim to open an account in a nationalised bank or post office nearest to his/her residence and deposit the amount to that account and-the amounts so deposited shall not be withdrawn nor permitted to be withdrawn until further directions as indicated hereunder:

(a) In case of illiterate claimants, the procedure in clause (1) should be followed. If lump sum payment is required to purchase any immovable property or other income yielding asset such as rickshaws or mulch cattle to earn a living, the Tribunal must consider such a request but there should be proof of bonafide negotiations to purchase such assets and on satisfying that such purchases are bonafide and bargain is scaled to the advantage of the claimant, direct withdrawal of the amount deposited from the account and the residue should be deposited or remain in long term fixed deposit in one or two schemes which would yield higher rate of interest;

(b) Direct regular payment of monthly or quarterly interest so earned to the claimants/victim;

(3) In case of semi-literate persons also, the same procedure as mentioned in clauses (1) and (2) should be adopted unless the Tribunal is satisfied for the reasons to be stated in writing by an order for withdrawal either of the whole or part of the amount required for expanding any existing business or to purchase any immovable or income yielding assets as mentioned in clause (2) to earn his/her livelihood. In either case, the Tribunal should ensure that the amount so withdrawn was spent for the specific purpose for which it was withdrawn;

(4) In case of literate persons also, the Tribunal shall adopt the same procedure as in Clauses (1) to (3), but having regard to the age, physical background, strata of the society to which the claimant/victim belongs and such other considerations of investing in fixed deposits, may release the rigour but direct that the amount to be withdrawn from the account should be utilized for the same fruitful purpose and proof placed before the Tribunal or court;

(5) In case of widow also, the same procedure envisaged hereinbefore should be adhered to;

(6) In case of minor girls, on attaining their majority or if the amount is needed

for their marriage purposes, permission should be given to withdraw the same for celebrating the marriage after the match is settled;

(7) In case of personal injury, if further treatment is necessary, the Tribunal should be satisfied of the same and it shall record in writing of the same and permit withdrawal of such amount as is necessary to incur the expenditure for such treatment; the balance amount should be deposited in fixed deposits and the interest accrued thereon may be paid monthly or quarterly, as the case may be;

(8) The claimant/victim should not be permitted to obtain loan on fixed deposits and there should be a direction to the bank not to permit to raise any loan on the fixed deposits so made or to make any advance on the deposit, but the interest accrued only should be paid either monthly, quarterly, half-yearly or annually, as the case may be, as per the request of the claimant or the guardian or next friend;

(9) There should bean endorsement on the deposit receipts that they are not transferable nor liable to any loan, advance or attachment;

(10) In case of urgency for withdrawal for unforeseen reasons after the expiry of initial period of fixed deposit, reasons must be assigned in an affidavit supported by a petition to be presented to the Tribunal concerned and the Tribunal should satisfy of the necessity or urgency for the withdrawal and on so satisfying, an order be passed regarding therefore permitting withdrawal of the amount.

(11) There shall be a direction to pay costs awarded by way of cheque either to the party or to the counsel with the consent of the party;

(12) These arc only illustrative, but not exhaustive. The Tribunals are free to adopt such other feasible procedure not in derogation to but to elongate the purposes envisaged, depending upon the peculiar facts and circumstances in a given case and a the reasons to be recorded in the order.

17. If this procedure is adhered to and followed, it would not only sub serve the purpose of awarding but also payment of compensation to the claimants, it would also eradicate the evil practices percolating in the portals of the court undermining the dignity of courts and efficacy of the rule of law. This rule should be followed by all the Tribunals in the State not only concerning the Claims Tribunals under the Act but also under the Land Acquisition Act and other welfare legislations.

18. The appeal is accordingly dismissed subject to the above directions. In the circumstances, there will be no order as to costs.