(1999) 01 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No''s. 12868 of 1998

Nowshad and Ors — APPELLANT

Vs

K.S.R.T.C — RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (1999) 1 KLJ 750

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : B. Sureshkumar, P.B. Sureshkumar, T.I. Abdulsalam, James Kurian, N. Anilkumar, Mathew Oommen, Mathew John, Thomas Mathew Nellimoottil, K.I. Abdul Rasheed, C.K. Abdul Rahim and T.K. Koshy, for the Appellant; V. Bhaskara Menon, S.C. for KSRTC and V.K. Mohanan, Govt. Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Petitioners in these cases are either victims or their legal representatives in connection with the accidents caused by the rash and negligent driving of the vehicles by the drivers of the Kerala State Road Transport Corporation, hereinafter referred to as the'' Corporation''. Accidents in most of the cases occurred a decade ago. After a long drawn litigation in the Tribunals, petitioners have approached this Court for a direction to the Corporation to pay compensation due to them. Victims of accidents have to wait several years undergoing physical and mental strain. Tribunals in all the cases found that the accidents occurred due to rash and negligent driving of the vehicles by the drivers of the Corporation. Even in cases where award amounts are considerably low, Corporation would not pay the amount. Petitioners have voiced their complaints that Corporation has been disbursing amounts according to their whims and fancies. Instances have been pointed out that even though the amount is huge, Corporation in certain cases within a few months of the date of the accident disbursed the amount without any orders from the Tribunal or orders in execution. Petitioners also contended that there are no guidelines laid down by the Corporation, with the result, the disbursing officers would release the amount according to their whims and fancies, giving room for arbitrary action.

2. I found force in the contention of counsel for the petitioners. Therefore I passed an order on 13-7-1998 directing the Corporation to furnish details of the amounts disbursed to the claimants for the years 1997 and 1998. As directed by this Court, a detailed statement has been made available to this Court by counsel for the Corporation. I have perused those details and found that in serveral cases Corporation has released the amount within a few months from the date of award. For example, O.P.M.V. No. 212/94 of Attingal MACT, award passed on 22-4-1997 for an amount of Rs. 4,31,724/- and the amount was deposited by the Corporation on 23-8-1997, that is within four months. So also the award was passed by the Tribunal in O.P.M.V. No. 213/94 on 22-4-1997 for an amount of Rs. 2,62,334/- and the amount was deposited on 15-11-1997. So also in O.P.M.V. No. 108 of 1991 of the MACT, Udumelpet, the award was passed on 19-6-1996 for an amount of Rs. 1,58,368/- and the amount was deposited on 28-1-1997.1 also noticed serveral other instances where amounts have been remitted within a few months of the date of the award. We find, at the same time, in very many cases, Corporation failed to deposit the amount even after 8 to 10 years from the date of the award. In many cases the accidents occurred a decade ago. In certain cases, amounts are below Rs. 25,000/- . For example, in O.P. No. 23358 of 1998, in O.P.M.V. No. 1390 of 1988 of the Motor Accidents Claims Tribunal, Attingal, the award was passed on 8-6-1993, for an amount of Rs. 6000/- with 12% interest from 14-10-1988. So farther amount has not been paid. In fact in the award there was a direction to the Corporation to produce before the Tribunal crossed demand draft for Rs. 6000/- plus interest in the name of the claimant within one month from 8-6-1993. Corporation did not pay the amount. this Court also later directed the Corporation to explain the delay caused in payment of small amounts and what are the modalities they are going to adopt in future with regard to the disbursement of award amounts.

3. A counter affidavit has been filed on behalf of the Corporation, by the Managing Director of the Corporation. Along with the affidavit, Annexure RI was produced stating the details called for by this Court in 62 cases. Details show that amounts have been deposited in certain cases within a few months of the award to avoid attachment. Details as to whether in fact there was attachment or not, and whether the assets of the Corporation have been attached or not have been disclosed. It is evident Corporation in many cases voluntarily deposited the amount. They should have followed a uniform yardstick, to all cases rather than picking and choosing awards for deposit. I find in certain cases when the claimants have approached the officials of the Corporation, they immediately oblige them and deposit the amount, as soon as the awards are passed even without any orders in execution. At the same time we find in very many cases, even after 10 years of the date of the award, amounts have not been deposited in the Tribunal.

4. The Managing Director of the Corporation stated in the counter affidavit that

Corporation could not follow a uniform procedure in the matter of releasing the award amount due to various reasons. Counter affidavit says that in certain cases immediately on passing of the awards by the Tribunals, the claimants initiate execution proceedings thereby coercive steps like attachment of buses are likely to be ordered. In certain other cases when usually interest at the rate of 12% will be ordered if the award amount is paid within the specified period with a default clause stipulating that the award amount with 12% interest if not paid within the period referred to in the award, the interest payable will be at the enhanced rate of 18%. In those cases, without considering the priority with reference to the date of award, the amount would be deposited. It is also pointed out due to unsoundness of the financial conditions of the Corporation, even retirement benefits due to the employees could not be paid promptly. So also the benefit of Fifth Pay Revision Commission is not extended to the employees of the Corporation in pari pasu with the other similar organisations. Due to severe financial constraints, Corporation could not deposit the Motor Accidents Claims Tribunal award amounts within the time limit specified in the respective awards. It is pointed out that an amount of Rs. 3 crores is required immediately for payment of pending cases, and the Corporation has no source to generate such huge amount. Reference was also made to hike in prices of diesel and other petroleum products imposing an additional burden of Rs. 4 crores per month on the Corporation.

5. I am of the view, the above mentioned reasons stated in the counter affidavit are not reasons worth defending cases in which accidents occurred and victims are suffering from disabilities and live with those disabilities. Victims are craving for compensation amount. They have suffered at the herds of the Corporation and continue to suffer due to non-payment of compensation amount. Corporation cannot be heard to contend that they do not have finance to pay-off the victims. Not an answer to a person who suffered in the accident, a decade ago. In fact Corporation is bound to pay the amount even without the intervention of the Tribunals. Tribunals are constituted to determine just and adequate compensation. However, I noticed that in many cases the Corpora ting is paying the amounts according to their whims and fancies without following any criteria or yardstick, giving room for arbitrary action ?n the part of disbursing officers.

6. Annexure R1 statement filed by the Corporation is far from satisfactory. Statement says that to avoid attachment, amounts have been paid. I am of the view this is not an answer to the query raised by this Court. Situations may arise when Corporation''s vehicles have been attached, and for release of the vehicles, amounts might have been deposited. No such details have been given in Annexure R1. It is also pertinent to note that in OPMV No. 212/94 the award was passed on 22-4-1997 for an amount of Rs. 4,31,724/- and the amount was deposited before the Tribunal on 23-8-1997 that is within four months. The answer given is that claimant has agreed to forgo 2% interest. The same is the reason for deposit of the amount in OPMV. No. 213/94. If that is the criteria followed by the Corporation, then Corporation should have informed all the

claimants, so that many of them would have foregone 2% interest for immediate deposit of the amount.

7. These are all reads where the Corporation officials could act arbitrarily. We shall not forget the fact that claimants are not seeking any charity from the Corporation. Rash and negligent driving of the vehicles by the drivers of the Corporation caused the accidents, and consequently the victims suffered, for which awards have been passed. It is under the said state of affairs, Corporation officials are favouring those persons who are willing to forgo 2% interest. Such favoured treatment was extended only to certain claimants, which is arbitrary and vocative of Art. 14 of the Constitution of ?ndia. As I have already mentioned, in one of the cases, OP. No. 23358 of 1998, the amount was only Rs. 6,000/- , the accident occurred in 1998, and the award was passed on 8-6-1993, and the amount is yet to be paid. Such instances are many. Corporation used to give little attention if the amount is small. Even though circular issued by the Corporation obliges them to disburse the amount immediately, if it is less than. Rs. 25,000/- , the same is not followed uniformly. It is high time that Managing Director should conduct a proper enquiry and to take follow up action so that the sufferings of the victims be redressed.

8. It is stated in the counter affidavit that the following is the general principle, which is being followed, in releasing the award amount:

(1)to carry out the directions of the High Court/Supreme Court.

(2)to avoid attachment of Corporation properties or to release the same if already attached.

(3)to avoid revenue recovery proceedings.

(4)settled cases in Adalats, Neethimelas at the initiative of the Motor Accidents Claims Tribunals.

(5)for payment of portion of the award amount while filing appeals as provided under Sec. 173 of the M.V. Act.

(6)payments are arranged in respect of decretal amounts below Rs. 25,000/- if the petitioner makes application to the Corporation seeking payment.

(7)Award amounts are released immediately if the claimants do not press for interest or portion thereof.

It is also stated in the counter affidavit that in the matter of releasing the award amount, priority be given with reference to the date of the award, but the Corporation could not follow the same due to reasons mentioned above. Corporation, it is pointed out is taking steps to pay the smaller sums to the victims of accidents or to their dependants out of compassion if the amount is below Rs. 10,000/- in settle cases immediately. Board of Directors in its meeting held on 30-5-1998 resolved that immediate settlement of the claims below Rs. 25,000/- will be made so as to clear back log and to avoid hardship to the victims of the accidents. Primary concern, according to Corporation, is to complay with the direction of this Court and also to avoid attachment of Corporation properties and hence priority for payment is given to cases in which execution proceedings are initiated. Further, it was pointed out it is solely due to execution proceedings now pending before various Tribunals, the Corporation could not evolve specific norms for payment of award amounts on a phased manner on the basis of seniority.

9 I am of the view, the above mentioned reasons stated by the Corporation, are far from satisfactory. I am of the view, in the interest of justice, the following directions have to be given to the Corporation in the matter of disbursement of compensation amount:

(1)Corporation is bound to comply with the direction issued by the Supreme Court and High Courts.

(2)In the matter of awards passed by the Tribunals, date of the award may be taken as the criterion for payment of the amount of compensation as far as possible. If there is any deviation with the same, specific orders of the Managing Director be obtained and Managing Director should state reasons for deviation.

(3)Corporation should prepare a list of awards of MACTS in the State for the amounts above Rs. 25,000/- and disburse the amounts strictly on the basis of date of the award, unless otherwise ordered, as stated hereinbefore.

(4)Corporation should see that all awards which are less than Rs. 25,000/- should be paid within a period of three months from the date of the award.

(5)If waiver of a portion of interest is the criterion for early disbursement of the compensation amount, that should be uniformly applicable to all. That should be made known to all the claimants. Disbursement of amounts on the plea that claimants agree to forgo a small portion of interest would give room for arbitrary action on the part of the disbursing officers, which shall not be done. Disbursement of the amount to a few persons on the plea of waiver of a portion of interest shall not be allowed. In such cases, it is made clear only after obtaining orders from the Managing Director the amount could be disbursed and Managing Director should state reasons for such disbursement.

(6)In the matter of settling claims by Adalats, Nethimelas, etc, initiated by the MACTs or any notified authority, the amount could be disbursed by the Corporation then and there, without following the above mentioned criteria.

(7)Managing Director would also oversee the action of the disbursing officers in the matter of release of more than Rs. l lakh and the manner in which request for early disbursement of the compensation amount is being entertained by the disbursing officers.

Managing Director of the Corporation is directed to pass orders with regard to claim of the petitioners in the light of the observations and directions contained in the judgment within a period of one month from the date of receipt of a copy of this judgment.

Original Petitions are disposed of as above.

