(2010) 08 AHC CK 0189

In the Allahabad High Court

Ramesh Chandra Mishra APPELLANT

Vs

Motor Accident Claims Tribunal/Special Judge (E.C. Act) and Others RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Citation : (2010) 5 AWC 4951

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the petitioner, questioning the validity of order dated 12.01.2010 passed by Special Judge (E.C. Act) / Motor Accident Claims Tribunal in Motor Accident Claim Petition No. 39 of 1996, Km. Shailja and Anr. v. Pooran Lal and Ors. and for issuance of a writ of mandamus, commanding the respondents to release the amount deposited in fixed deposit in Nationalized Bank in pursuance of award dated 25.08.1998 passed by Motor Accident Claims Tribunal in Motor Accident Claim Petition No. 39 of 1996 Km. Shailja and Anr. v. Pooran Lal and Ors.

2. Brief background of the case is that the petitioner and his sister Km. Shailja Mishra filed claim petition No. 39 of 1996, which was allowed on 25.08.1998. Petitioner submits that pursuance to directives contained in the said award, as far as amount in favour of his sister is concerned, same had been released. Only a sum of Rs. 15,000/- had been released in his favour and the balance was invested in Fixed Deposit for 15 years. Petitioner submits that he required money for settlement of his son, as such an application was made to the Motor Accident Claims Tribunal for premature release of the amount in question. Said request of petition has been turned down by mentioning that premature encashment was not permissible. At this juncture, present writ petition has been filed.

3. Before proceeding, it would be necessary to peruse the guidelines which were issued by the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation v. Sushma Thomas and Ors. (1994) 1 TAC 323. The

relevant extract of the said judgment is quoted herein below:

(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor 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 The expenses incurred by the guardian or next friend may however be allowed to be withdrawn;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 (1) 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 rouge 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 (1) 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. A perusal of the aforesaid guidelines indicates that in case the Tribunal invested the compensation in a long term fixed deposit, the Tribunal would also consider the claim of the claimant for early withdrawal in case of an emergency

under Clause (viii) of the guidelines.

5. The authority of Claims Tribunal in releasing the amount in question is not at all doubted, but the paramount consideration is that illiterate claimant is not dodged and the amount in question which is required by her is actually spent for the purpose and the demand is not a ruse to withdraw the money.

6. On parameters as set out by Hon''ble Apex Court, there is not complete prohibition on premature release of the amount invested in Fixed Deposit, and it has to be tested as per needs.

7. In the present case the need, which has been set up by the petitioner, has not been adverted to by the Motor Accident Claims Tribunal and the application has been rejected only by saying that premature release is not permissible. In this background, liberty is given to the petitioner to move fresh application before the Claims Tribunal specifically justifying the bona fides of the need of money. In the event of any such representation being moved, the Motor Accident Claims Tribunal will examine the bona fides of the petitioner as well as need set up by him for premature release of the invested amount, and take appropriate decision thereon, in accordance with law, within a reasonable period.

8. Writ petition is disposed of in terms of the aforesaid directions.

