

(2013) 04 AHC CK 0073

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21853 of 2013

Smt. Nasreen and Another

APPELLANT

Vs

U.P. State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Citation : (2013) 5 ALJ 568 : (2013) 98 ALR 653 : (2013) 5 AWC 4731

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Aashish Srivastava, for the Appellant;

Judgement

Tarun Agarwala, J.—Heard Sri. Aashish Srivastava, the learned counsel for the petitioner. The petitioner No. 1 is the widow and the petitioner No. 2 is the mother of the deceased who died in an accident and a claim application was filed under the provisions of the Motor Vehicles Act. The Motor Accident Claims Tribunal gave an award dated 10.5.2012 awarding a compensation of Rs. 2,83,480/-out of which the widow was to be given a sum of Rs. 23,480/- in cash and the balance amount of Rs. 1,20,000/- to the widow, and to the parents, a total sum of Rs. 1,30,000/- was to be paid, but, this amount was to be kept in a fixed deposit for a period of five years. Pursuant to the award, the U.P.S.R.T.C., against whom the claim was filed, accepted the award and deposited the amount before the Accident Claims Tribunal. Based on the direction of the Tribunal, the amount was invested and a sum of Rs. 23,480/- was released in favour of the petitioner No. 1.

2. The widow, petitioner No. 1 and the mother, petitioner No. 2, thereafter filed an undated application praying for the release of the amount on the ground that they have taken loans from various persons and that the amount was required in order to clear the debts. This application has been rejected by the Tribunal by an order dated 22.2.2013 against which the present writ petition has been filed.

3. The Tribunal has rejected the claim of the petitioner on the ground that in

view of Rule 220-B of the Motor Vehicle Rules as inserted by the U.P. Motor Vehicles 11th Amendment Rules, 2011, which came into force w.e.f. 26.9.2011, the amount of compensation was rightly directed to be kept in a Fixed Deposit and that the amount could not be prematurely released in favour of the claimant. The Tribunal accordingly rejected the application. The petitioner, being aggrieved by the said order, has filed the present writ petition.

4. Having heard the learned counsel for the petitioner, the Court is of the opinion, that the writ petition can be disposed of at the admission stage itself without calling for a counter affidavit since the respondents have already deposited the amount and are no longer concerned with the end result.

5. The Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , issued certain guidelines for the Claims Tribunal while awarding compensation. The said guidelines are extracted hereunder:--

(i). The claims Tribunal should, in the case of minors, invariably order amount of compensation awarded to the minor invested in long term fixed deposit 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 in (i) above unless it is satisfied for reasons to be stated in writing, that the whole or part of the amount is required for expending any 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 realization 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 so 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 a 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.

6. These guidelines have now been incorporated by the Legislature and Rule 220-B of the Uttar Pradesh Motor Vehicle Rules, 1998 have been inserted in the Rules.

7. Where an amount of compensation is directed to be kept for a fixed period, the said amount can be withdrawn or encashed prematurely provided a bona fide application is made for early withdrawal of the compensation and reasons are provided. In *Shaheen Bano v. Motor Accident Claims Tribunal and others*, 2007(2)TAC 755 : (2007 (4) ALJ (DOC) 202), the Court held, that if a bona fide purpose is made for early withdrawal of the compensation, the Tribunal should consider the bona fide purpose and should not deny the claimant on the sole ground that premature encashment cannot be done.

8. In *Yogendra Singh and Another Vs. Motor Accident Claims Tribunal and Others*, , the Court held that neither the Tribunal nor the Insurance Company had any right to object to the encashment of the money.

9. In the instant case, the claimants are major and as per the guidelines of the Supreme Court, in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, , which has now been incorporated in Rule 220 of the Rules, the underlying purpose of securing the interest of the claimant by putting the amount of compensation in a fixed-deposit is to protect their interest in given circumstances, such as, where the claimants are minors and their upkeep was required to be protected or where the claimants are suffering from personal injury and the amount was required for further treatment or where the Tribunal thinks that the claimants are illiterate and, therefore, the amount was required to be invested so that the claim amount was not wasted and such other circumstances, which are required to be contemplated by the Tribunal while keeping the amount of compensation in a fixed deposit. Other than that, the Tribunal should release the amount to the claimants so that they can reap the benefits of the compensation.

10. Rule 220-B further provides that the amount so invested can be withdrawn, if a case is made out that the amount is required to purchase any moveable or immovable property for improving the income of the claimant or the amount is required for expansion of the business or considering the age, fiscal background and strata of the society to which the claimants belong or such larger interest

that could be taken into consideration by the Tribunal.

11. In the instant case, the claimants have made a categorical statement that the amount was required to be encashed prematurely in order to repay the loans, which they had taken. Obviously, if the loan is repaid, their economic condition would improve, which would ultimately lead to improving their income. Such ground is a relevant ground coupled with the fact that the claimants are major and minor children are not involved which would require the compensation amount to be kept in a fixed deposit for their upkeep. Further, if the amount is invested for a period of time, the claimants will not be able to enjoy the compensation.

12. In the light of the aforesaid, the Court is of the opinion, that the Tribunal, committed a manifest error in rejecting the application of the petitioner's mechanically without considering the relevant criteria given in Rule 220-B of the Rules. Consequently, the impugned order cannot be sustained and is quashed. The writ petition is allowed and a writ of mandamus is issued to the Tribunal to release the amount in favour of the petitioners by encashing the F.D.Rs. prematurely.