

(1995) 11 MAD CK 0053

In the Madras High Court

Case No : C.M.P. No. 13471 of 1993 in A.A.O. No. 1119 of 1993

United India Insurance Co. Ltd.

APPELLANT

Vs

Kovindan and Others

RESPONDENT

Date of Decision : 02-11-1995

Acts Referred:

Motor Accidents Claims Tribunal Rules, 1989 — Rule 20(10), 20(11), 20(12), 20(13), 20(14)

Motor Vehicles Act, 1988 — Section 168, 169, 173

Citation : (1996) 1 CTC 113

Hon'ble Judges : Kanakaraj, J;Janarthanam, J

Bench : Division Bench

Advocate : D. Bright Joseph, for the Appellant; G. Subramanian for Subramanian, R. Balasubramanian, Subramanian, T. Sampath and Ranganathan for Respondents 4 and 5 and Um. Ravichandran, for Respondents 1 to 3, for the Respondent

Judgement

1. The appeal has been filed by an Insurance Company u/s 173 of the Motor Vehicles Act, 1988 (hereinafter called "the Act") against an award in M.C.O.P. No. 380 of 1993 dated 22.3.1993 awarding a sum of Rs. 1,21,000/- to the claimants (respondents 1 to 3 herein) with interest at 15 per cent per annum from the date of the Claim Petition as well as costs of the claim petition. There was also an apportionment by the Tribunal directing a sum of Rs. 40,000/- each to claimants 1 and 2 (respondents 1 to 2 herein) and a sum of Rs. 41,000/- to the minor claimant. The amount payable to the minor claimant was directed to be deposited in a Bank till the attaining of the majority of the minor with a direction to pay over the quarterly interest to the first claimant. Inasmuch as the owner of the vehicle had remained ex parte, in the proceedings before the lower court, the Insurance Company is disputing their liability as well as the quantum of compensation claimed by the appellants. It is not necessary to notice the other facts of the case except to state that the Lorry bearing Registration No. TDF 4329 belonging to the fourth respondent herein and driven by the fifth respondent

herein. Dashed against one Paulraj going on a cycle resulting in his death. The first claimant is the father of the deceased and the second claimant is the mother of the deceased. The minor third claimant is the younger brother of the deceased.

2. In the appeal, the Insurance company is questioning the earning capacity of the deceased and the multiplier applied for quantifying the total compensation.

3. The appeal was admitted on 30.9.1993 and in C.M.P. No. 13471 of 1993 seeking stay of the award, interim directing had been given directing the deposit of the entire amount with interest and costs. The total amount has since been paid by the appellant/petitioner herein. A counter affidavit has been filed stating that the award of the Tribunal is perfectly justified in law and the quantification of the compensation was in accordance with the well settled principles. The claimants (respondents 1 to 3) therefore, seek to have the miscellaneous petition dismissed, so that they can withdraw the compensation amount awarded to them in the manner directed by the Tribunal.

4. In the past this Court has been permitting withdrawal of some percentage of the award amount and making the stay absolute. While examining the question on the basis of the Motor Vehicles Act and the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 (hereinafter called "the Rules) framed u/s 176 read with Section 211 of the Motor Vehicles Act, we experienced certain difficulties in permitting withdrawal of the amount awarded as compensation without reference to Rule 20 of the said Rules. In our considered opinion, a permission granted at the interim stage without sufficient safeguards would nullify and frustrate the beneficial provisions of Rule 20 of the Rules. Inasmuch as several applications are being filed seeking stay of such awards by the Motor Accidents Claims Tribunal and an equal number of applications are filed by the claimants for withdrawing the amount pending disposal of the appeal, we directed all such applications pending before us to be posted, so that the arguments of other Advocates could also be heard and no prejudice will be caused to anybody on account of our order in the above Miscellaneous Petition, which is likely to be of a general nature. Accordingly, at the request of several counsel, we adjourned the case to 30.10.1995 and heard not only the counsel for the appellant and respondents 1 to 3 in this case, but also the other counsel like Mr. Subramanian, Mr. R. Balasubramaniam, Mr. subramaniam in the office of Mr. T. Sampath, Mr. Ranganathan, and Mr. G. Subramaniam, Senior Counsel.

5. Before advertng to the arguments of learned counsel, we will refer to the provisions of law. Chapter XII of the Act beginning with Section 165 relates to the Claims Tribunals Section 168 relates to the Award of the claims Tribunal and Section 169 relates to the procedure and powers of the Claims Tribunal. Section 173 provides for an appeal to the High Court against an award of the Claims Tribunal. Proviso to section 173(1) of the Act says that no appeal by the person who is required to pay any amount in terms of such award, shall be entertained by the High Court unless he has deposited with the Tribunal twenty-five thousand rupees or fifty percent of the award amount whichever is less. Section 174 of the

Act provides for the recovery of money from Judgment Debtor as an arrear of land revenue. We have already referred to the fact that the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 are framed u/s 176 read with Section 11 of the Act. The Rules provide for the manner of investigation of a motor accident, the manner of investigation of a motor accident, the manner of filing an application before the Tribunal and the manner of determining the compensation by the Tribunal. Rule 20 of the Rules with which we are concerned, says that the Tribunal shall record concisely the findings on each point and make an award specifying the amount of compensation to be paid by the insurer or the owner of the vehicle or such other persons and specify the persons who are entitled to receive the compensation. Sub-Rule (2) requires the Tribunal to apportion the compensation as between one or more claimants. We are, in particular, concerned with Sub-Rules (7) to (14) of Rule 20. Briefly stated they relate to the manner in which the compensation payable to a minor, an illiterate, a semi-literate and a literate claimant should be invested in Fixed Deposits permitting only the payment of certain amounts on the basis of contingencies mentioned in the Rules. These Rules have not been struck down by any court of law as ultra vires the Act or the Constitution of India. We therefore, proceed on the basis that the Rules are valid and enforceable. We may, however, add Sub-Rules 7 to 14 have been incorporated with a specific purpose to safeguard the interest of the claimants who are mostly from the poorer category and who are mostly illiterate persons. The existence of a racket between certain persons having vested interests in appropriating compensation amount leaving only a meager or a paltry sum reaching the aggrieved claimants had been taken note of by the Legislature while framing the Rules. Secondly, the Legislature has apparently, thought that even a claimant cannot capitalise on a road accident and try to get a lumpsum amount and squander the same away, in the case of fatal accidents. The earning capacity of the deceased and the contribution that he would have made to the estate and the number of years for which he would have made such a contribution are taken note of. Therefore, it is but proper that the corpus of the compensation remains in a Fixed Deposit earning only an interest to the claimants to be received either monthly or quarterly. Of course, where certain amount is required for meeting expenses like the medical expenses or marriage expenses or such unforeseen expenses, there is always a provision to make an application and to receive a reasonable amount fixed by the Tribunal.

6. When such is the beneficial provision of Rule 20 of the Rules, are we justified in permitting the claimants to withdraw either 50 per cent or some other percentage of the money without any consideration of the said Rule 20 of the Rules? Can the Court by way of interim order nullify such beneficial provisions and direct payment of the compensation simply because an appeal is filed and this Court directs the deposit of the entire amount to the credit of the Original Petition? In our considered opinion, such payment at the interim stage should also be strictly in accordance with Rule 20, Sub Rules (7) to (14). This is

precisely the point on which we asked learned counsel to make their submissions. Mr. R. Subramaniam argues that the Rules do not apply to the High Court when an appeal is being disposed of or a miscellaneous petition in an appeal is being disposed. In other words, the Rules apply only to the Tribunal. We have no hesitation in rejecting the argument straightway because under the Act the appeal is provided to the High Court from the award of the Claims Tribunal. Therefore, when the High Court exercises power u/s 173 of the Act, it sits in the arm-chair of the Claims Tribunal and it has all the powers of the Tribunal and cannot claim any extra power beyond what the Tribunal has under the Act and the Rule. This is the dictum of law and any claim beyond this could only be characterised as an illegal exercise of power without jurisdiction, to say the least. Reference is then made to a decision in *Vishnu Traders v. State of Haryana* (1995 Supp (1) Supreme Court Cases 461) where the need for consistency in approach and uniformity in the exercise of judicial discretion respecting similar case has been stringed by the apex court. Therefore, it is argued that the past practice must be adhered to by us in disposing of the miscellaneous petition. The judgment of the Supreme Court above referred to was rendered in certain general matters not relating to a Motor Accidents Claim which are governed by statutory Rules, and which Rules had not been taken into account in the earlier interim orders relied on by the counsel. Reference is then made to a decision in *Managing Director, Thanthal Periyar Transport Corpn. Villupuram Vs. K.C. Karthiyayini*, . We do not see how the said decision helps or improves the stand of the claimants. The said judgment has only laid down that when the matter reaches the High Court, all provisions of the CPC would be applicable and the High Court in dealing with such appeals is not in the position of a special Tribunal, who hears the matter as the original Appellate Court and hence the provision of CPC are applicable before it. In fact, the said Division Bench while approving an earlier judgment has also referred to the fact that all the Rules of CPC would be applicable to such an appeal "inasmuch as no other procedure is prescribed under the said Act." They were dealing with the question of limitation. What all we are pointing out in this case is, that the Rules has prescribed a different manner of payment in the case of Motor Accidents Claim. Mr. R. Balasubramanim has only argued on the basis of his particular case which can be dealt with when his case is taken up separately. On behalf of Mr. Sampath, Mr. Subramaniam also argued that the Rules cannot restrict the powers of the High Court and we cannot ignore the past practice. We have already considered these arguments Mr. Ranganathan appearing for an Insurance Company, argues that the interest of the Insurance Companies should be taken into consideration before payments are directed even in a miscellaneous petition. Mr. G. Subramaniam, learned Senior Counsel, agrees that the Rules are for the benefit of the claimants, but suggest that the Court should take a reasonable attitude in the matter of payment of compensation when appeals are filed and the execution is stayed.

7. There is one other judgment to which we should make a reference before

rendering our decision. That judgment is reported in G.M. Kerala State Road Trans. Corporation v. Susamma Thomas (1994) A.C.J. 10. That case arose out of a similar Motor Accidents Claim from the State of Kerala. After deciding the case on merits, the apex court observed:

"In a case of compensation for death it is appropriate that the Tribunals do keep in mind the principles enunciated by this court in Union Carbide Corporation v. Union of India (1991) 4 SCC 84, in the matter of appropriate investments to safeguard the feed from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptible to exploitation."

The apex court also confirmed similar Rules in the State of Gujarat providing for deposit of money in Fixed Deposits in the case of a Motor Accidents claim and observed that those guide- lines should be borne in mind by the Tribunal in the case of compensation in accident cases. We have already observed that we cannot claim any special power beyond what the Claims Tribunal has under the Act and the Rules. We therefore, hold that in the matter of directing payment of compensation even as an interim measure. Rule 20 Sub- Rules 7 to 14 should be strictly observed. We must also record with certain amount of dissatisfaction and pain that most of the Tribunals do not pay attention to Rule 20 while passing an award. For instance, they do not make apportionment between the claimants, and they do not provide in the award itself as to the manner of deposit of the compensation keeping in mind Sub-Rules 7 to 12. Only in the case of minors they take care to direct deposit of the amount. In all other cases, they ignore Sub-Rules 8, 9, 10 and 11. We therefore, direct this judgment to be circulated to all the Motor Accident Claims Tribunals in the State through the respective District Courts.

8. So far as the present application for stay and the counter affidavit filed by the claimants, we feel that inasmuch as the entire amount has since been deposited to the credit of the Tribunal the following order will meet the ends of justice: -

So far as the amount payable to the minor which has been directed to be deposited till his minority, and the payment of quarterly interest to the first respondent, the same is not altered. So far as the payment of Rs. 40,000/- each to claimants 1 and 2 (respondents 1 and 2) are concerned, the interim stay is made absolute on condition that respondents 1 and 2 are permitted to withdraw upto fifty per cent of the award amount, subject to their satisfying the Tribunal about the requirements of Rule 20 Sub-Rules 7 to 12. Such applications for withdrawal shall be disposed of by the Tribunal within two months from the date of receipt of such application.