
(2017) 05 RAJ CK 0204

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3590, 3669 Of 2017

Vimla And Ors

APPELLANT

Vs

Learned Judge,, Accidental Claims Tribunal, Churu And Ors

RESPONDENT

Date of Decision : 10-05-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Section 114, Order 47 Rule 1
Motor Vehicles Act, — Section 30, 32, 34, 35 (a), 75(a), 75(c), 76, 77, 94, 95, 132, 133, 144, 147, 148, 149, 151, 152, 153, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 176
Rajasthan Motor Vehicles Rules, 1990 — Rule 10.22, 10.22(3), 10.22(4), 10.27, 10.28

Citation : (2017) 05 RAJ CK 0204

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : K.R. Saharan, N.L. Joshi

Final Decision : Allowed

Judgement

1. These writ petitions are directed against order dated 10.3.17 passed in Motor Accident Miscellaneous Case No. 44/16 and order dated 9.2.17 passed in Motor Accident Miscellaneous Case No.71/15 & 13/15, by the Motor Accident Claims Tribunal, Churu (for short "the Tribunal"), rejecting the applications preferred by the claimants for pre mature release of the amount kept in FDRs in terms of the awards passed in their favour.

2. The applications preferred as aforesaid by the claimants seeking pre mature release of the FDRs have been rejected by the Tribunal solely on the ground that the Tribunal has no jurisdiction to review the award. In this regard, the reliance has been placed on a decision of Jaipur Bench of this court dated 10.3.14 rendered in the matter of "Kapil Lodha vs. The Judge, MACT" (S.B.C.Writ Petition No.300/09).

3. In Kapil Lodha's case (supra), a coordinate Bench of this court while dealing with the issue regarding the jurisdiction of the Tribunal in entertaining an

application seeking pre mature release of the FDR, relying upon a decision of the Hon'ble Supreme Court in the case of "General Manager, Kerala State Road Transport Corporation Trivandrum vs. Mrs. Susamma Thomas & Ors.", AIR 1994 SC 1631, observed that if in a given case while passing the award, the liberty is extended by the Tribunal to the claimants to apply for withdrawal in case of emergency the claimants may apply for withdrawal of the amount but in case where no such liberty is given no application for direction to release the amount pre maturely can be entertained by the Tribunal unless the Tribunal is having power to review its judgment/order. Relying upon a decision of this court in the matter of " Smt. Imliya vs. United India Insurance Co. Ltd. & ors." (S.B.C.Writ Petition No.2404/2005), the court held that the Tribunal is not having any power to review its judgment/order/award and therefore, cannot pass any order contrary to the directions in the award.

4. In Imliya's case (supra), a coordinate Bench of this court while dealing with the issue relating to the power of the Tribunal to review its award while taking into consideration inter alia the provisions of Rule 10.27 & 10.28 of Rajasthan Motor Vehicles Rules, 1990 (for short "the Rules") held:

"The Tribunal as constituted under the Motor Vehicles Act while dealing with the claim application even when having the trappings of the Civil Court, its jurisdiction is specifically defined by the statutory provisions and the rules framed thereunder. So far as the powers of the Civil Court that are vested in the Claims Tribunal and procedure to be followed by the Claims Tribunal are concerned, such aspects have specifically been delineated in Section 169 of the Act and Rule 10.27 and Rule 10.28 of the Rajasthan Motor Vehicles Rules, 1990. Significant it is to notice that the provisions of Section 114 CPC or Order XL VII Rule 1 and CPC, relating to powers of review have not, as such been made applicable to the proceedings before the Claims Tribunal. The Tribunal, in the opinion of this Court, had no jurisdiction to deal with a so-called review application moved under Order XL VII CPC and the impugned. Order, passed on a so-called review application, cannot be upheld."

5. It is true that the statutory provisions do not confer any power upon the Tribunal to review its own judgment/order/award. But then, the issue regarding the power of the Tribunal to vary the order as to distribution of any sum paid as compensation or as to manner in which sum payable to any such dependent is to be invested, applied or otherwise dealt with needs to be examined yet another perspective.

6. As per provisions of Section 168 of the Motor Vehicles Act, 1988 (for short "the Act of 1988"), after holding an inquiry into the claim, the Tribunal is required to make an award determining amount of compensation which appears to it to be just and specify the person or persons to whom compensation shall be paid and thus, the Tribunal is empowered to pass the appropriate order distributing the compensation amount between claimants considering their dependency.

7. Section 169, which deals with procedure and powers of Tribunal provides that in holding an inquiry under Section 168 for determination of claim for compensation subject to any rules that may be made in this behalf, the Tribunal may follow such summary procedure as it thinks fit.

8. Section 176 empowers the State Government to make rules for the purpose of carrying into effect the provisions of Sections 165 to 174 of the Act of 1988.

9. It is to be noticed that in exercise of the powers conferred under the various sections of the Act of 1988 including Section 176, the State Government has framed the Rules. The Chapter X of the Rules, deals with the Claims Tribunals.

10. Rule 10.27 of the Rules, makes provision that the power vested in the Civil Court under Sections 30, 32, 34, 35 (a), 75(a) and (c), 76, 77, 94, 95, 132, 133, 144, 147, 148, 149, 151, 152 & 153 may be exercised by the Claims Tribunal so far as they may be applicable, subject to the provisions of Section 174 of the Act of 1988. By virtue of Rule 10.28, the provisions of Order XXI CPC, are also made applicable to the proceedings before the Claims Tribunal. That apart, it has been specifically provided that in so far as the Act and the Rules make no provision or make insufficient provision, the relevant provisions of the Code of Civil Procedure, 1908 shall so far as may be, apply to the proceedings before the Claims Tribunal. Suffice it to say that for the purpose of carrying into effect the provisions of Sections 165 to 172 which deal with the determination of claim by the Claims Tribunal, award of interest and compensatory cost so also the disbursement of the amount of compensation, the Tribunal is not precluded from invoking the provisions of CPC so far as may be applied to the proceedings before the Tribunal.

11. Moreover, Rule 10.22 of the Rules, deals with judgment and award of compensation to be passed by the Claims Tribunal. Clause (3) of Rule 10.22 empowers the Tribunal to make appropriate provisions regarding the investment of the amount of compensation deposited where it is payable to a woman or person under legal disability. Further, as per clause (4) of Rule 10.22, where an application is made to the Claims Tribunal in this behalf or otherwise, the Tribunal is satisfied that on account of the negligence of the children on the part of the parents or on account of variation of the circumstances of the dependent or for any other sufficient cause, an order of the Tribunal as to distribution of any sum paid as compensation or as to manner in which sum payable to any such dependant is to be invested, applied or otherwise dealt with ought to be varied, the Tribunal may make such order for variation of the former order as it thinks fit just in the circumstances of the case.

12. It is true that after passing the award, the Tribunal becomes functus officio and it cannot review the determination for entitlement of compensation under the award. But then, so far as the order directing disbursement of the amount of compensation already determined is concerned, invoking the power under Rule 10.22 (4) of the Rules, it is open to be reconsidered and varied by the Tribunal

where it is found just in the circumstances of the case in the interest of the claimants.

13. Indisputably, while dealing with the issue with regard to pre mature release of the FDR in Kapil Lodha's case (supra), the provisions of Rule 10.22 of the Rules were not brought to the notice of the court. In the considered opinion of this court, even where no liberty is given by the Tribunal while passing the award to the claimants to apply for withdrawal of amount pre maturely in case of emergency, keeping in view of provisions of Rule 10.22 (4) of the Rules, on an application being made on behalf of the claimants for varying the order passed by the Tribunal as to distribution of any sum paid as compensation or as to manner in which some payable to any such dependent is to be invested, applied or otherwise dealt with, the Tribunal is empowered to vary such order for sufficient cause as it thinks fit in the circumstances of the case. Thus, the applications preferred by the claimants for pre mature release of the FDRs on account of changed circumstances and emergent need as pleaded could not have been dismissed by the Tribunal for lack of jurisdiction.

14. Undoubtedly, while passing an order for disbursement of the award amount, the Tribunal has to be keep in view the overall interest of the claimants but while dealing with the amount of compensation, need and wishes of the claimants should also be kept in view inasmuch as, ultimately, the amount of compensation belong to them. Suffice it to say that an application preferred by the claimants for varying the order passed as to disbursement of the award amount needs to be considered by the Tribunal in each case on merits, keeping in view, the larger interest of the claimants.

15. In the result, the writ petitions are allowed. The order impugned order dated 10.3.17 passed in Motor Accident Miscellaneous Case Nos. 44/16 and order dated 9.2.17 passed in Motor Accident Miscellaneous Case No.71/15 & 13/15, by the Motor Accident Claims Tribunal, Churu, are quashed. The applications preferred by the petitioners herein shall stand restored to the files of the Tribunal. The Tribunal is directed to decide the applications on merits in accordance with law, expeditiously.