

RAJASTHAN HIGH COURT

Bhanwari Devi

Vs.

Union of India

Civil Writ Petn. No. 2709 of 2003

(H. R. Panwar, J.)

06.06.2003

ORDER

H. R. Panwar, J.

1. By this writ petition under Article 227 of the Constitution of India though petitioner has not sought relief against respondent Nos. 1 and 2; even otherwise, they are neither necessary nor proper parties, but she has challenged the order dated 19-5-2003 (Annex. 2) passed by the Judge, Motor Accident Claims Tribunal, i.e. the persona designate.
2. Mr. R. K. Soni, Additional Government Advocate accepts notice on behalf of respondent No. 3. Since a short question of law is involved in this petition, therefore, at the joint request of the learned counsel for the parties, the instant writ petition is heard finally and disposed of at the admission stage.
3. The facts giving rise to the instant writ petition are that petitioners son Sumer Singh died on 22-6-1973 due to motor vehicle accident which took place on 21-6-1973. Petitioner, being the mother and legal representative of deceased Sumer Singh, filed a claim petition for compensation before the respondent No. 3, the Motor Accident Claims Tribunal, Jodhpur (for short, "the Tribunal"). Being unsuccessful before the Tribunal, she filed an appeal before this Court, which was decided vide order dated 20-8-1986. Against the order of the learned Single Judge of this Court dated 20-8-1986, petitioner preferred D. B. Civil Special Appeal No. 19/1987 and the Division Bench, vide judgment and order dated 13-11-2002, allowed the appeal and awarded compensation in favor of the petitioner and against respondents Nos. 1 and 2 to the tune of Rs. 1,50,000/- along with interest @ 9% per annum from the date of the claim application till payment. Respondent No. 1, the Union of India, which is the owner of the vehicle which caused accident, deposited a sum of Rs. 6,14,681/- by a cheque

towards full and final settlement of the claim and interest thereon before the Tribunal. Petitioner requested the Tribunal to release the said amount of the cheque in her favor by verifying and recording satisfaction of the Award. By the impugned order dated 19-5-2003 (Annex. 2), the Tribunal, instead of releasing the whole amount of cheque in favor of the petitioner, thought it proper to direct payment to the petitioner in the following terms: (i) Rs. 2,14,681/- in cash; (ii) Rs. 2,00,000/- to be deposited in a Fixed Deposit Account in a nationalized bank for a period of three years; and (iii) Rs. 2,00,000/- to be deposited in a Fixed Deposit Account in a nationalized bank for a period of five years. The Tribunal further directed that the fixed deposit receipts shall neither be pledged nor the amount of fixed deposit receipts be allowed to be withdrawn pre-maturely. Aggrieved by the impugned order Annex. 2 dated 19-5-2003 passed by the Tribunal, the petitioner, an old lady of 65 years, has filed the instant writ petition seeking direction to quash the impugned order of the Tribunal dated 19-5-2003 (Annex. 2) and also to release the whole amount of the cheque in her favour and to verify the payment.

4. I have heard learned counsel for the parties.

5. The grievance of the petitioner is against the impugned order dated 19-5- 2003 (Annex. 2) passed by the Tribunal suo motu. Neither the respondent No. 1 requested the Tribunal to pass such order, nor was there any such direction by the Division Bench of this Court while awarding the compensation vide judgment dated 13-11-2002. It has been contended by the learned counsel for the petitioner that petitioner is a literate lady belonging to a well-to-do family and there is absolutely no possibility or chances of the cheque amount being misused by some one else, on the contrary, if the amount of compensation which came to her due to death of her son after thirty years of his death, is allowed to be deposited for a long period then the very purpose of awarding compensation would be frustrated and it may rather create many complications in the event of unforeseen eventuality as the petitioner is an old and sanile lady of sixty-five years and is having uncertainty of future, she is capable in wisely managing the amount of compensation and, therefore, the whole amount of the cheque may be released in her favor without any ridder of depositing the amount in fixed deposit accounts in nationalised bank and she may be allowed to invest the amount in the manner and mode she wishes. In support of his contention, learned counsel for the petitioner has placed reliance on the judgment of Allahabad High Court in *Smt. Runna v. Vth Additional District Judge/Motor Accident Claims Tribunal, Gorakhpur*,¹ wherein it was held that the direction to deposit the amount of compensation in some nationalised bank for a long term is not sustainable when the

claimant is major. Further reliance has been placed on *Durga Devi v. Motor Accident Claims Tribunal, Kurukshetra*,² wherein the Punjab and Haryana High Court held that when the claimant is major, it was her choice either to deposit the money in a bank or receive it in hand and the Courts domain without the consent of the petitioner in ordering her part of share of the compensation to be deposited in the bank is illegal; no duty is cast upon the Tribunal to direct the people to deposit money in a particular bank and this practice adopted by the Courts should be done away for it creates problems for the claimants who have to run to the Court for relief.

6. In *Chatar Lal v. Motor Accident Claims Tribunal, Rajsamand*³ this Court held that there is a fundamental distinction between imposition of restriction on the use of property and deprivation of a person of his property. There may be a situation where a person may not be deprived of his property arbitrarily and capriciously yet such reasonable restriction may be imposed about its user or management. Such reasonable restrictions are imposed by the Tribunal taking extraordinary precautions to see that the amount of award should reach to real claimants. The Court further held as under:-

"It is true that a Court of law or a Tribunal can judiciously impose reasonable restrictions on the use of the property of a minor or a person of unsound mind but such restrictions may remain valid till he attains the age of majority and in case of a person of unsound mind till he attains his or her mental health. Here, in the present case, indisputably the petitioner is neither a minor nor a person of unsound mind, therefore, the Tribunal has no legal justification whatsoever to impose unreasonable restrictions on the use of the lump sum compensation of Rs. 1,00,000/- deposited in the Fixed Deposits Account of the petitioner in the Bank of Baroda, Nathdwara."

7. With all respects, I would differ with the view taken by the Punjab and Haryana High Court taken in the above referred case. In a case of compensation for death in motor vehicle accident cases, the Tribunal, in appropriate case, may direct the claimant for investment to safeguard the fund from being frittered away by the beneficiaries owing to illiteracy, ignorance and susceptibility to exploitation. The Honble Supreme Court, in *Union Carbide Corporation v. Union of India*,⁵ enunciated the principle for disbursement of compensation amount. The Gujarat High Court, in *Muljibhai Ajarambhai Harijan v. United India Insurance Co. Ltd.*,⁶ offered certain guidelines which were approved by the Apex Court in Union Carbide Corporations case (supra). However, these guidelines offered by the Gujarat High Court are not absolute and they are subjected to certain exceptions, which should be considered in the light of facts and circumstances of an individual case.

8. In *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas*,⁶ the Honble Supreme Court, reiterating the view taken by the Apex Court in *Union Carbide Corporations case* (supra), observed that the guidelines should be borne in mind by the Tribunal in the cases of compensation in accident cases. In the case of a literate person, the guidelines were subject to exceptions having regard to the age, fiscal background and strata of the society, to which the claimant belongs and such other considerations and in the larger interest of the claimants, observed that the guidelines may be relaxed and if the Tribunal thinks it necessary to do so, it may order accordingly. It was further observed by the Apex Court that even in respect of the claimants who are sui juris, their interest, if they are illiterate or semi-literate, must also be protected from possible exploitation.

9. Keeping in view the exceptions in the guidelines (iii) offered in *Muljibhais case* (supra), the instant case, on being examined, appears to be a case which may fall in the exception clause, viz. guidelines (iii). At the time of awarding the compensation neither the learned Single Judge offered any such condition for making deposit of the compensation amount, nor the Division Bench made such an order. Obviously, in view of the fact that the compensation was awarded to the petitioner after about thirty years from the date of cause of action and also keeping in mind the fact that the petitioner is an old and literate lady having sound family and fiscal background, it was not open for the Tribunal to have refused to disburse the whole amount of compensation awarded by the Division Bench of this Court. Rule 2 of Order 21 of the Civil Procedure Code, 1908 provides that where any money payable under a decree of any kind is paid out of Court or the decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

10. Therefore, in my view, the Tribunal exceeded its jurisdiction in directing the petitioner to keep the compensation amount in Fixed Deposit Accounts in nationalized bank for a long period. This amounts to depriving the petitioner to hold and enjoy the property. The compensation amount is a property, to which the petitioner has a legal right to hold and enjoy in the manner she wishes, however, with certain reasonable restrictions and rider as enunciated by the Honble Apex Court in the above referred judgment. Keeping in view the status of the petitioner, her age, fiscal background and literacy, it would be in the larger interest that the compensation amount, which has been deposited by the tort-feasor after about a long period of thirty years, must reach to the petitioners hand in her sound domain as to how to hold and use it. In this view

of the matter, the instant writ petition deserves to be allowed.

11. In the result, the writ petition is allowed, the impugned order dated 19-5-2000 (Annex. 2) passed by the Tribunal is set-aside and the learned Tribunal is directed to release the whole amount of the cheque forthwith. There shall be no order as to costs.

Petition allowed.

Cases Referred.

1. (1998) 1 TAC 450
2. 1997 Acc CJ 445
3. (1997) 1 Raj LW 169: (1997 AIHC 1417)
4. (1991) 4 SCC 584: (AIR 1992 SC 248)
5. (1982) 1 Guj LR 756
6. (1994) 2 SCC 176: (AIR 1994 SC 1631)