

Civil Revision No.687 of 2017
Date of Decision: 02.02.2017

Gagandeep Singh and another ...Respondents

Briefly, the facts of the case, as made out in the petition, are that husband of petitioner No.1, namely, Mangal Singh and father of petitioners No.2 to 4 died in a road accident on 09.09.2011, when he was coming back to his house, the offending vehicle i.e truck bearing No.RJ-14-GB-8927, which was being driven by respondent No.1, struck with motorcycle from its back. An FIR No.195 dated 10.09.2011 was registered against respondent No.1 under Sections 304-A, 279, 427 and 338 IPC. Petitioner no.1, being widow and minor children of deceased Mangal Singh, filed a claim petition under Section 166 of the Motor Vehicles Act

against the owner, driver and insurer of the offending vehicle before the Motor Accident Claims Tribunal (here-in-after referred to as the 'MACT'), Tarn Taran. Vide award dated 13.10.2014, a compensation amounting to ₹ 8,45,000/- was awarded in favour of the petitioners. As per order of the Tribunal, the amount of compensation was to be disbursed into equal share among all the claimants but the share of petitioners No.2 to 4 was ordered to be converted into Fixed Deposit Scheme in a Nationalized Bank and the same was to be released to them on attaining the age of majority. In terms of award dated 13.10.2014 passed by the MACT, Tarn Taran, an amount of ₹ 1,80,000/- each was deposited in the name of petitioners No.2 to 4 for a period of ten years in Punjab and Sind Bank and petitioner No.1, being the mother, stood as guardian.

However, the MACT, Tarn Taran, while passing the award, overlooked the guidelines for payment of the interest amount directly to the claimant for the welfare of the children or for their study, therefore, an application was moved by the petitioners for modification of award dated 13.10.2014 passed by MACT, Tarn Taran but the same was dismissed vide impugned order dated 12.10.2016, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioners submits that while passing the award, the Tribunal has overlooked the guidelines framed by Hon'ble the Apex Court in cases titled as ***Kerala State Road Transport Corporation, Trivandrum vs Mrs. Susamma Thomas and others 1994 AIR (SC) 1631, Union Carbide Corporation vs Union of India 1991(4) SCC 584 and Muljibhai vs United India Insurance Company (1982) 23(1) Gujarat Law Reporter 756***. Learned counsel also submits that the amount is

required for pursuing the study of minor children, so the amount of interest on the Fixed Deposit is necessary to be paid but the same has been declined. He also submits that petitioner No.1 is a semi literate lady, who has lost her husband at her early age of life and she has to support her three children. Not only the amount is required for household expenses but even for providing best education to the children and there is no other source of her income. At the end, learned counsel for the petitioner submits that the award passed by the MACT, Tarn Taran may be modified to the extent of payment of monthly interest directly on the FDR to the claimant deposited in the name of petitioners No.2 to 4 in the nationalized bank.

Heard the arguments of learned counsel for the petitioners and have also perused the impugned order as well as other documents available on the file.

Facts regarding death of husband of petitioner No.1 and passing of award by MACT, Tarn Taran are not disputed. It is also not disputed that the learned Tribunal has awarded compensation amounting to ₹ 8,45,000/- in favour of all petitioners, which is to be shared equally by all the claimants but the share of petitioners No.2 to 4 was ordered to be converted into Fixed Deposit Scheme in a nationalized bank, which was to be released on attaining the age of their majority. The application moved by the petitioners for release of amount of interest against FDRs deposited in favour of petitioners No.2 to 4 has been dismissed by the Tribunal only on the ground that it has been moved after passing of about two years of award and the applicant has remained mum for a long period. It is also mentioned that the applicant should have filed appeal against award or should have moved the application for modification of award immediately.

In **Mrs. Susamma Thomas's** case (supra), Hon'ble the Apex Court laid certain guidelines with a direction to all the Tribunal across the nation to follow the same, which are as under :-

“(i) The Claims Tribunals 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 (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 rogue 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 expanding 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 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 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 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 the claimants liberty to apply for withdrawals 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.”

The said judgment was further followed in ***Muljibhai's*** and ***Union Carbide Corporation's*** cases (supra).

On perusal of impugned order passed by the Tribunal, it appears that the Tribunal has not taken into consideration the judgments relevant to the facts of the case as it is not sufficient to award compensation to the victim or his legal representatives, as the case may be, but it is also its duty to ensure that the amount awarded is not frittered away. It should also be remembered that lump sum compensation is to be paid to the claimants who are either the victim of the accident or their legal representatives by applying an appropriate multiplier with a view to provide for his or their

future prospectus. Meaning thereby, instead of spreading out the amount of compensation over a number of years having regard to the estimated future life span, as a measure of convenience, lump sum payment is ordered. In case, whole or substantial part of the compensation money is paid to the claimants who have never handled such huge amounts in their lives, there is the danger of their frittering away the amount for want of fiscal discipline in their lives. Accordingly, the Claims Tribunal is to protect the interest of the claimants and by considering this aspect, the Claims Tribunal issued direction to deposit the lump sum amount in FDR, in case, the dependent children are there. The Claims Tribunal, while investing the amount in long term fixed deposits, should take care to see as to whether any loan can be permitted against said fixed deposit to the applicants by the Bank without obtaining its express order in that behalf. Not only it is to be seen as to whether the amount deposited for the welfare of the dependent children be spent for other purposes except for their welfare but it is also to be seen as to whether those children are being taken care of while meeting out their expenses for livelihood as well as education. In case, the amount is deposited for a long period then certain conditions can be imposed by considering the welfare of minor claimants. While investing the amount in long term fixed deposits, some note should be made in the bank records to rule out the possibility of obtaining a loan or advance by taking out a duplicate receipt. The Tribunal should also consider as to whether the fixed deposit should be extended for further period or not. In cases, wherein investment is of long term fixed deposits, 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 should be paid monthly directly to the claimant or

his guardian, as the case may be but the liberty should be given to apply for withdrawal in case, the emergency is there or to meet out such a contingency. In case the amount is required for an emergency, then even the F.D.R can be liquidated.

In the present case, the mother i.e petitioner No.1 is also dependent and petitioners No.2 to 4 are minor children, who are pursuing their studies. A request by way of an application has been made for grant of interest on monthly basis so that she can meet out the expenses of study of her minor children. The said application has been dismissed by passing a reference of casual approach that it has been filed after a gap of two years and for that purpose, she could have filed appeal. The application moved by the petitioners is only for releasing the amount of interest for the purpose of study of the children. The request is to modify the award passed by the Tribunal to that extent only.

In view of the above, I find merit in the contentions raised by learned counsel for the petitioners and as such, the present petition is allowed and the impugned order dated 12.10.2016 is set aside and the MACT, Tarn Taran is directed to re-consider the request/application of the petitioner afresh in view of observations as made above and pass necessary order by modifying the award that the amount of interest be allowed to be withdrawn on monthly basis.

(DAYA CHAUDHARY)
JUDGE

02.02.2017
gupreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes