IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 7451 of 2016 (O&M)

DATE OF DECISION:14.03.2017

Smt. Mindro and others ....Petitioners

Versus

Krishan Kumar and others ....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vaibhav Sehgal, Advocate
for the petitioners.

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DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 13.9.2016 (Annexure P-1) passed by Motor Accidents Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'), whereby, the application moved by the petitioners for releasing some share from the FDRs of the minors for their maintenance has been dismissed.

Briefly, the facts of the case are that the claimants-petitioners, who are mother and two minor children of deceased-Sardar Ali filed claim petition under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act') for grant of compensation to them on account of death of Sardar Ali in an accident. The claim petition was filed through mother of the deceased as his children were minor. The claim petition was allowed and claimants were granted compensation to the tune of ₹8,80,000/- towards all the heads as the matter was compromised with the respondent-insurance company. Out of the total amount of compensation, claimant-mother of the deceased was awarded ₹1,00,000/- and the remaining amount of compensation was ordered to be paid to the minor children by way of FDRs in the nationalised bank till they attain the age of majority.

An application was moved by the claimant-mother of the deceased, namely, Mindro stating therein that she is an old lady and having no source of income. She is hardly maintaining both the minor children, who are school going. It has also been mentioned in the application that after the death of her son, she has also borrowed some amount from the relatives for maintenance of herself and minor grand children. She has prayed in the application that the amount, which is lying deposited in FDRs be released to her so that she may be able to maintain and educate both the minor children. Said application was dismissed vide order dated 13.9.2016 on the ground that the Court cannot go beyond the award and allowing the application would amount to review of the earlier order, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioners submits that the impugned order has been passed without any application of mind and the same is contrary to judgment of Hon'ble the Apex Court in the case of **Kerala State Road Transport Corporation Vs. Susamma Thomas and others** 1994 (2) PLR 01. Learned counsel has also relied upon the judgment of this Court in **Ankush Manro Vs. Rajinder Singh and others** (C.R. No. 1287 of 2013 decided on 26.2.2013).

Notice of motion was issued in the case on 8.11.2016. Vide order dated 17.12.2016, since respondents No.1 and 2 were not served, fresh notices were ordered to be issued to them.

Learned counsel for the petitioners contends that the impugned order has nothing to do with the respondents and effecting service upon them is not necessary.

Heard the arguments advanced by learned counsel for the petitioners and have also gone through the impugned order and other documents available on the file.

Facts relating to filing of claim petition, allowing the same by the Tribunal and share of compensation granted to minor claimants by way of FDRs in a national bank are not disputed. The purpose of depositing the amount of compensation in FDR was to ensure the payment at the right occasion. It was mentioned in the award passed by the Tribunal that the FDRs be encashed at the time of attaining age of majority of the minors. Since the grandmother of the minors felt necessity of the money as there was no source of income to her not only for maintenance of the minor children but for their education also, she filed an application for releasing some share from the FDRs of the minors for their maintenance. The application moved by the grandmother was dismissed without considering the guidelines issued by Hon'ble the Apex Court in **Susamma Thomas case (supra).** Both the minor children are in the age group of 4-5 years and the money is not only required for their education but for livelihood also. The purpose and object of guidelines laid down by Hon'ble the Apex Court is to ensure that the compensation amount may not go in the hand of unscrupulous persons as well as to overcome the financial difficulty of the family members of the deceased-victim. In case the amount of compensation is not allowed to be utilized at the right time, no purpose would be served. However, it is to be seen that reason for withdrawal of the amount of compensation should be genuine.

Hon'ble the Apex Court in **H.S. Ahammed Hussain Vs. Irfan Ahammed** 2002 (3) RCR (Civil) 563 has observed that where the amount is required by the parents of the victim of accident, there is no necessity to issue directions to deposit of the amount in a nationalised bank. The observations of the Apex Court are as under:-

> "Learned counsel for the appellant lastly submitted that the amount of compensation payable to mothers of the victims should not have been directed to be kept in fixed deposit in a nationalised bank. In the facts and circumstances of the present case, we are of the view that the amount of compensation awarded in favour of the mothers should not be kept in a fixed deposit in a nationalised bank. In case, the amounts have not been already invested, the same shall be paid to the mothers, but if, however, invested by depositing the same in fixed deposit in a nationalised bank, there may be its premature withdrawal in case the parties so intend".

This view of Hon'ble the Supreme Court was again reiterated in case of ***Lilaben Udesing Gohel vs. The Oriental Insurance Company Ltd., 1996 (3) RCR (Civil) 18***. Para No.17 of the said judgment reads as under: -

> "17. Before we part we must observe that even though the guidelines laid down in Muljibhai's case have been approved and applied by this Court in the aforementioned two cases, many Motor accidents Claims Tribunals and even some of the

High Courts in other parts of the country do not follow them. We are also told that in claims that are settled in or outside the Court or Tribunal, including Lok Adalats or Lok Nyayalayas, these guidelines are overlooked. We would like to make it absolutely clear that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or agreement between the parties the Court/Tribunal must apply these guidelines. We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the Fixed Deposit Receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the Court/Tribunal which ordered the deposit. This will eliminate the practice of taking loans which may be up to 80% of the amount invested and thereby defeating the very purpose of the order. We do hope that the Courts/Tribunal in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claim. We are sure that the Courts/Tribunals will realise their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them. The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements will be equally shared by the Courts/Tribunals."

This view of the Hon'ble Supreme Court has been consistently followed and guide-lines as laid down in the **Union Carbide Corporation, etc., etc., Vs. Union of India, etc. etc. (supra)** are being enforced. Even the judgment of Hon'ble Supreme Court in **H.S. Ahammed Hussain Vs. Irfan Ahammed (supra)** is on the facts of the said case and does not lay down the law that in every case an adult member is entitled to withdraw the FDR as was sought to be contended.

Accordingly, the present revision petition is allowed and impugned order dated 13.9.2016 is set aside and a direction is issued to release an amount of ₹2 lacs by way of premature release of FDR from the concerned Bank. The Bank authorities are also directed to release the amount within a period of ten days from the date of receipt of certified copy of the order after proper verification.

March 14, 2017 **(DAYA CHAUDHARY)**
pooja **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes