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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No. 34 of 2018

Mukesh Kumar Yadav, S/o Rajaram Yadav, aged about 22 years, R/o Village Chhitapadaria, P.S. Baradwar, Distt. Janjgir-Champa (C.G.)

----Petitioner/applicant

Versus

1. Nihal Singh, S/o Man Singh, aged about 33 years, R/o Tatiband, P.S. Amanaka, Tahsil and District Raipur (C.G.) (Driver)

2. Nirmal Singh, S/o Avtar Singh, aged about 30 years, R/o LIG 14-15, Tatiband, P.S. Amanaka, Tahsil and Distt. Raipur (C.G.) (Owner)

3. The Oriental Insurance Co. Ltd., Branch Office Uday Society, Tatiband, Raipur, Tahsil and District. Raipur (C.G.) (Insurer)

---- Respondents/non-applicants

For Petitioner : Mr. Ravindra Agrawal, Advocate.
For Respondents : None appeared.
Shri Bhaskar Pyashi, Advocate appears as Amicus Curiae

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/12/2018

1. Mr. Ravindra Agrawal, learned counsel appearing for the petitioner would submit that amount of compensation enhanced by the National Lok Adalat held in the Chhattisgarh High Court Bilaspur on 8th July, 2017 to the extent of Rs. 4,00,000/- has been deposited by the Insurance Company before the Claims Tribunal and when the application for withdrawal of the said amount was filed by the petitioner/claimant for his treatment as well as his personal need, Claims Tribunal directed to deposit the amount of Rs.3,60,000/- out of additional compensation of Rs. 4,00,000/- in the fixed deposit for the period of 10 years without there being any order by the National Lok Adalat held in Chhattisgarh High Court,

which is bad and unsustainable in law.

2. I have heard learned counsel appearing for the petitioner and learned Amicus Curiae.

3. The Claims Tribunal ought to have considered the application in its proper perspective particularly when there is no order by the National Lok Adalat of this Court to deposit the amount in the Fixed Deposit and the need of the petitioner / claimant ought to have been considered by reasoned and speaking order as the amount belongs to the learned Claims Tribunal.

4. In the matter of **Amarsingh, S/o Madhavsingh Raghuvanshi Vs. Rajesh, S/o Bhagirath and others**[1] High Court of Madhya Pradesh relying upon the judgment of the Supreme Court in the matter of **General Manager, Kerala State Road Transport Corporatoin, Trivandrum Vs. Sussama Thoma and others**[2] has held as under:

> "6. The tribunal has not understood the spirit behind the guidelines which the Supreme Court has given in the judgment of General Manager, K.S.R.T.C. v. Sussamma Thomas (supra). The Supreme Court has taken utmost care to see that the money awardable to the claimant as compensation should not be spent out by him extravagantly, but at the same time the Supreme Court has taken care to see that the said money should be utilised properly, reasonably for genuine needs of such claimants. Lok Adalats are held for the purpose of giving speedy relief to the persons who are coming to the courts for the purpose of getting relief. The relevant provisions dealing with the claim petitions preferred by the victims who sustained injuries, permanent disability, temporary disability and in cases of deaths, should be applied by adopting benevolent

1 1999 (2) M.P.L.J. 482
2 (1994) 2 SCC 176

approach and attitude. The litigants should be encouraged to come forward before Lok Adalats for the purpose of settling their disputes amicably, and speedily. It should be seen that the arrears of such matter are wiped off at early date by amicable settlement. The approach taken by the tribunal is not proper, desirable and benevolent keeping pace with the benevolent spirit of the enactment and Lok Adalat movement.

7. If the amount which a claimant is entitled to receive, is not given to him at least substantially, why the litigant would be coming to Lok Adalat for the purpose of attempting to settle his dispute amicably? It is common experience that in "Lok Adalat" the contesting parties reduce their claims reasonably in discussion which leads to amicable settlement. The spirit is to get just relief and forgo unreasonable part of the demand. Therefore, it is presumed that the claimant comes down, at the same time advisory also comes down from the stands taken by it in the litigation by way of written statement at the advice of mediators. That is how the amicable settlements are arrived at in "Lok Adalats". If the parties are denied the advantage of getting the substantial amount from such awards, I am afraid, the parties would not be interested in coming forward with eager mood. Now the courts have decided to hold Lok Adalats frequently and in that context "Permanent Lok Adalats" have been also established. The main purpose in doing this exercise is to see that arrears are wiped off and persons coming to the courts should get relief at least within reasonable time.

8. True, the amount awarded to a claimant or his heirs, should be invested in fixed deposits, if he is unable to take care of his money. The widows, minors and illiterate persons cannot be thrown at the hands of tricky persons in the society who would be keeping their greedy eyes on their money, so awarded. But a person who is in service and who is residing in big city like Indore, would be

definitely taking care of his money and he would be using it rationally. A victim after getting injuries in an accident is taken to a hospital initially which is available in close proximity. Thereafter he is taken to the hospital of his choice. If such a victim is entitled to choose a hospital of his choice, he cannot be asked to get the medical treatment in a particular hospital or government hospital. He is entitled to have costly medical treatment also in sophisticated hospital. After all, in such situation always he is interested in safeguarding his safety and health. In the present matter the petitioner had taken medical treatment in sophisticated hospital like Choithram Hospital, Indore. In doing that, he might have incurred substantial expenditure. It is also possible that he might have taken a loan of Rs. 40,000/- from a creditor and that creditor has now issued a notice to him demanding repayment of said amount and at the same time threatening him for suing him in the court. If the petitioner is not given the amount which he needs for purpose of repaying the loan, I am afraid, there would be nothing but putting him to hardship and humiliation. When he is having an amount which is receivable by him, why he should face a suit in the Civil Court? Why he should attend the court for that purpose by taking the leave? Why he should engage a lawyer and incur further expenditure? Certainly he should not be put to such worries.

9. The tribunal should have noted that it is not possible to point out all incidental needs in the judgment while giving the guidelines. The categories have been mentioned but that does not mean that the tribunal is restricted to those categories only. There may be different needs and the tribunal is to see whether the need is genuine; whether it is necessary for the said claimant to get the amount for fulfilling the said need. While giving the amount to him it should always be seen whether the amount is sufficient enough to meet his need? It should be seen whether he is interested in spending that amount extravagantly? The test would be always

> different, depending on different needs put forth. The claim tribunal has to use its wisdom for the purpose of finding out correct way for dealing with such prayers and petitions. The judgment of Supreme Court in General Manager, KSRTC v. S. Thomas's case (supra) and the guidelines given therein, in my view, are not preventing the tribunal to use its own reasonable discretion. It is not proper to reject the prayers of all such needy persons by misreading the guidelines given by Supreme Court in S. Thomas's case (supra).
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> 10. The Tribunal should adopt a reasonable approach while dealing with such petitions and prayers, by using reasonable attitude and by using appropriate discretion, keeping in view the benevolent spirit behind the enactment.”

5. Having regard to the law laid down by the Supreme Court and the Madhya Pradesh High Court in the above-cited cases, I am of the view that since the petitioner being an adult person in the need of the money and is able to understand how to use the money awarded to him as compensation for the injuries sustained by him in the year 2010 as also the fact that the matter was amicably settled in the National Lok Adalat held in the Chhattisgarh High Court, Bilaspur without imposing any condition about deposit of enhanced amount in the fixed deposit, in my considered view that the Claims Tribunal ought to have allowed the petitioner/claimant's application for withdrawal of the amount which has been deposited by the insurer, instead of ordering to keep it in the fixed deposit.

6. Accordingly, writ petition is allowed. Impugned order dated 8.9.2017 passed by the Tribunal is set aside. The Claims Tribunal is directed to consider and decide the petitioner's application for withdrawal of the amount afresh after affording due opportunity of hearing to the petitioner in accordance with law expeditiously preferably within a period of two weeks from the date of receipt of certified copy of this order keeping in view the need of the petitioner.

7. Accordingly, the writ petition is allowed to the extent indicated hereinabove. No cost(s).

8. A copy of this order be sent to the concerned Claims Tribunal through E-mail / FAX for compliance and needful.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-