NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 997 of 2018

1. Ram Kumar Kenwat S/o Mahesh Ram Kenwat, aged about 37 years,

2. Smt. Dhaneshwari Bai Kenwat, W/o Ram Kumar Kenwat, aged about 34 years, R/o Villag Thuthi, P.S. and Tahsil Jaijaipur, District Janjgir Champa (C.G.) **---- Petitioners/Claimants**

Versus

1. Bali Ram Dewangan S/o Late Ram Narayan, aged about 30 years, R/o Azad Chowk, Patal, District Durg (C.G.)

2. Suchcha Singh S/o S. Jassa Singh, aged about 56 years, R/o MIG-2/2982, M.P.H.B. Bhilai, District Durg (C.G.)

3. Branch Manager, National Insurance Company Limited, Branch No. 1, Bhutani Complex, G.E. Road Power House Bhilai, District Durg (C.G.) **--- Respondents**

For Petitioners	:	Mr. Praveen K. Dhurandar, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/11/18

1. The petitioners were the claimants before the Claims Tribunal.

2. The Claims Tribunal by its award dated 10.02.2017 awarded compensation of Rs. 2 lakhs to the petitioners along-with 6% interest per annum from 21.06.2016 to the date of payment. The petitioners preferred an appeal bearing MAC No.1636/2017 before this Court seeking enhancement of amount under award and ultimately by award dated 09.12.2017, the amount of compensation was enhanced to the

extent of Rs. 2.50 lakh. This enhanced amount was deposited by the insurance company before the Claims Tribunal on 23.02.2018. Thereafter, the petitioners made a prayer for withdrawal of the entire enhanced amount of compensation. However, learned Claims Tribunal vide impugned order dated 16.04.2018 directed for deposit of Rs.1,00,000/- (two counts) in a fixed deposit scheme in a nationalized bank for a period of 5 years (two counts) and further directed to pay only the interest amount per month to the claimant/petitioners herein.

3. Learned counsel for the petitioners submits that there is no order by this Court while enhancing the amount under award to deposit the enhanced amount of compensation in a fixed deposit scheme of any nationalized bank, therefore, the Claims Tribunal is absolutely unjustified in issuing such direction.

4. I have heard learned counsel for the petitioners and perused the impugned order.

5. In the matter of **A.V. Padma & others Vs. R. Venugopal & others**[1] Their Lordships of the Supreme Court have noticed earlier decision of the Supreme Court in the matter of **General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas and others**[2]**,** and has issued certain guidelines in order to safeguard the interest of the claimants and held that change of attitude and approach on the part of the Tribunals is necessary in the interest of justice; further held that the Tribunal should not dispose of the claim

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1 2012 (2) C.G.L.J. 322
2 AIR 1994 SC 1631

petition for withdrawal of the amount of compensation in a mechanical manner and without proper application of mind, this has resulted in serious injustice and hardship to the claimants. Paragraphs 5 & 6 of the report states as under:-

> “5. Thus, sufficient discretion has been given to the Tribunal not to insist on investment of the compensation amount in long term fixed deposit and to release even the whole amount in the case of literate persons. However, the Tribunals are often taking a very rigid stand and are mechanically ordering in almost all cases that the amount of compensation shall be invested in long term fixed deposit. They are taking such a rigid and mechanical approach without understanding and appreciating the distinction drawn by this Court in the case of minors, illiterate claimants and widows and in the case of semi-literate and literate persons. It needs to be clarified that the above guidelines were issued by this Court only to safeguard the interests of the claimants, particularly the minors, illiterates and others whose amounts are sought to be withdrawn on some fictitious grounds. The guidelines were not to be understood to mean that the Tribunals were to take a rigid stand while considering an application seeking release of the money. The guidelines cast a responsibility on the Tribunals to pass appropriate orders after examining each case on its own merits. However, it is seen that even in cases when there is no possibility or chance of the feed being frittered away by the beneficiary owing to ignorance, illiteracy or susceptibility to exploitation, investment of the amount of compensation in long term fixed deposit is directed by the Tribunals as a matter of course and in a routine manner, ignoring the object and the spirit of the guidelines issued by this Court and the genuine requirements of the claimants. Even in the case of literate persons, the Tribunals are automatically ordering investment of the amount of compensation in long term fixed deposit without recording that having regard to the age or fiscal background or the strata of the society to which the claimant belongs or such other considerations, the Tribunal thinks it necessary to direct such investment in the larger interests of the claimant and with a view to ensure the safety of the compensation awarded to him. The Tribunals very often dispose of the claimant's application for

withdrawal of the amount of compensation in a mechanical manner and without proper application of mind. This has resulted in serious injustice and hardship to the claimants. The Tribunals appear to think that in view of the guidelines issued by this Court, in every case the amount of compensation should be invested in long term fixed deposit and under no circumstances the Tribunal can release the entire amount of compensation to the claimant even if it is required by him. Hence a change of attitude and approach on the part of the Tribunals is necessary in the interest of justice.

6. In this case, the victim of the accident died on 21.7.1993. The award was passed by the Tribunal on 15.2.2002. The amount of compensation was enhanced by the High Court on 6.7.2006. Neither the Tribunal in its award nor the High Court in its order enhancing compensation had directed to invest the amount of compensation in long term fixed deposit. The Insurance Company deposited the compensation amount in the Tribunal on 7.1.2008. In the application file by the appellants on 19.6.2008 seeking withdrawal of the amount without insisting on investment of any portion of the amount in long term deposit, it was specifically stated that the first appellant is an educated lady who retired as a Superintendent of the Karnataka Road Transport Corporation, Bangalore. It was also stated that the second appellant Poornachandrika is a M.Sc. Degree holder and the third appellant Shalini was holding Master Degree both in Commerce and in Philosophy. It was stated that they were well versed in managing their lives and finances. The First appellant was already aged 71 years and her health was not very good. She required money for maintenance and also to put up construction on the existing house to provide dwelling house for her second daughter who was a co-owner along with her. The second daughter was stated to be residing in a rented house paying exorbitant rent which she could not afford in view of the spiralling costs. It was further stated in the application that the first appellant was obliged to provide a shelter to the first daughter Poornachandrika. It was pointed out that if the money was locked up in a nationalized bank, only the bank would be benefited by the deposit as they give a paltry interest which could not be equated to the costs of materials which were ever increasing. It was further stated that the delay in payment of

> compensation amount exposed the appellants to serious prejudice and economic ruin. Along with the application, the second and third appellants had filed separate affidavits supporting the prayer in the application and stating that they had no objection to the amount being paid to the first appellant."

6. Learned Claims Tribunal has not assigned any reason as to why the petitioners are not entitled for disbursement of Rs. 1,80,000/- as the petitioner's daughter has died on 07.03.2016 and this Court (High Court) while enhancing the amount under award has not directed for deposit of said amount in a fixed deposit scheme of any nationalized Bank. Therefore, the impugned order directing deposit of enhanced compensation to the extent of Rs. 1,00,000/- (two counts) in a fixed deposit scheme of any nationalized bank is liable to be set aside.

7. Accordingly, the impugned order is set aside. The Claims Tribunal is directed to consider the application of the petitioner afresh within 30 days from the date of receipt of certified copy of this order in the light of observation made in ***A.V. Padma*** (supra) and that too by passing a reasoned and speaking order.

8. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

SD/-

(Sanjay K. Agrawal)
Judge

Priyanka