BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)(MD) No.457 of 2017

M.Vimala ... Petitioner/Petitioner/Petitioner

-Vs-

1. Sriram General Insurance Company Ltd.,
Rep. by the Branch Manager,
2nd Floor, 25-B2/15, S.R.C.Complex,
North Block 25-B, S.N.High Road,
Tirunelveli-627 001.

2. The United India Insurance Company Ltd.,
Divisional Office,
Assisi Building, P.W.D.Road,
Nagercoil, Kanyakumari District.
... Respondent/Respondent/Respondents 4 & 7

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order in I.A.No.244 of 2016 in M.C.O.P.No.149 of 2013 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Kanyakumari at Nagercoil and direct the Motor Accident Claims Tribunal , (Chief Judicial Magistrate), Kanyakumari District at Nagercoil to disburse the balance compensation amount of Rs.5,00,000/- with accrued interest and cost to the petitioner, which was awarded in M.C.O.P.No.149 of 2013 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Kanyakumari at Nagercoil and allow the Civil Revision Petition.

For Petitioner : Mr.N.Sudhagar Nagaraj

For R2 : Mr.J.S.Murali

For R1 : No Appearance

ORDER

The revision petitioner / claimant, who is the wife of the deceased, had filed M.C.O.P.No.149 of 2013 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Kanyakumari at Nagercoil, claiming a compensation of Rs.40,00,000/- for the death of her husband in an accident occurred on 10.02.2013. After considering the materials available on record, the Tribunal had awarded a sum of Rs.24,09,900/-, out of which, the petitioner was allowed to withdraw Rs.5,09,000/- with immediate effect and the balance was ordered to be kept in deposit. Aggrieved by the said condition, the petitioner had filed I.A.No.244 of 2016 before the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Kanyakumari at Nagercoil for modification of the condition, which was partly allowed, permitting the petitioner to withdraw only Rs.3,00,000/- out of Rs.5,00,000/- and challenging the same, the present revision petition has been filed by the petitioner/claimant.

2. It is the case of the revision petitioner that her husband met with an accident and died, leaving her and her children in lurch and though the Tribunal had awarded Rs.10,09,900/- in respect of her share, the same was not allowed to be withdrawn in full. It is the further case of the revision petitioner that after the accident of her husband, she spent huge amount for his treatment and borrowed debt amount from several persons. It is the claim of the petitioner that in order to clear all her debts, the release of the entire amount payable to her is essential. It is also submitted that on account of the dilapidated condition of her house, she rented out a house for dwelling at the rate of Rs.4000/- per month and since she is having three children, the release of the award amount would to some extent be helpful for their studies. Hence, it is prayed that the order of the Tribunal needs to be set aside and the entire amount due to her may be ordered to be returned.

3. Learned counsel appearing for the 2nd respondent would contend that though he has no say in this petition, taking into consideration the literacy of the petitioner, the Tribunal would have allowed a part amount to be withdrawn to safeguard the interest of the petitioner.

4. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent. This Court also perused the material documents available on record.

5. It is seen that the husband of the petitioner, while riding his bicycle, was hit by an imbalanced motorcyclist on account of a sudden turn of one JCB vehicle bearing Regn.No.TN-74 R 1647, on account of which, the deceased sustained fatal injuries and died. Subsequent to the death of the deceased, the claimants, who are the wife, three children and mother of the deceased had filed a claim petition before the Tribunal, which, upon consideration, had awarded Rs.24,09,900/- with a condition that out of the amount awarded to the wife / petitioner herein, 50% of the amount, viz., Rs.5,00,000/- should be kept in deposit in a Nationalized Bank and the said deposit amount was subsequently modified to Rs.2,00,000/-. Narrating her financial crisis, she is before this Court, seeking the release of the balance amount of Rs.2,00,000/- too.

6. Learned counsel for the petitioner, in support of his submission that no purpose would be served in keeping the compensation amount in long term fixed deposit in anyone of the Nationalized Banks, has relied upon a judgment of the Hon'ble

Supreme Court in the case of A.V.Padma and others vs. R.Venugopal and others, reported in 2012 (1) TN MAC 380 (SC), wherein it has been observed as follows:

> "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."

7. A bare reading of the above judgment would unearth that each case has to be weighed on its own facts and circumstances, instead of taking a rigid and mechanical approach without understanding and appreciating the distinction drawn by the Hon'ble Supreme Court in the case of minors, illiterate claimants and widows and in the case of semi- literate and literate persons. Further clarification was issued by the Hon'ble Supreme Court that the guidelines were issued only to safeguard the interests of the claimants, particularly the minors, illiterate claimants and widows and in the case of semi- literate and literate persons.

8. In the present case on hand, it is seen that besides granting amount to the petitioner, a portion of the amount was ordered to be kept in deposit in respect of share of minor children and the petitioner has sought to withdraw the amount from her share awarded by the Tribunal, that too, for repairing her dilapidated house. The Tribunal had not given an justification for ordering long term deposit of the amount, except saying that its paramount duty is to safeguard the interest of the petitioner. When the petitioner herself has been insisting for the release of the amount citing her poverty, the purpose of safeguarding her by way of long term deposit gets defeated. The Tribunal had lost sight of the real purpose for which the entire amount was sought to be released by the petitioner, by mechanically following the guidelines issued by the Hon'ble Supreme Court without understanding its real object. Hence, finding force in the contention raised by the petitioner, in my considered opinion, the order dated 31.08.2016 passed in I.A.No.244 of 2016 in M.C.O.P.No.149 of 2013 by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Kanyakumari at Nagercoil, is liable to be set aside.

9. In the result,

a) this Civil Revision Petition is allowed and the order dated 31.08.2016 passed in I.A.No.244 of 2016 in M.C.O.P.No.149 of 2013 by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Kanyakumari at Nagercoil, is hereby set aside.

No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

The Chief Judicial Magistrate,
(Motor Accidents Claims Tribunal),
Kanyakumari at Nagercoil.

+1CC to Mr.J.S.Murali, Advocate, SR.No. 75125
+1CC to Mr.N.Sudhagar Nagaraj, Advocate, SR.No.75298

C.R.P.(NPD)(MD) No.457 of 2017
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AR
ES/RP/SAR 4/17.10.2018/5P/4C