

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227. No. 363 of 2016**

Hemant Kumar S/o Doliram, Aged About 17 Years As Per Award, Now Aged About 24 Years, R/o Village Karkeli, P.S. Bedare, District Bijapur Chhattisgarh.

---- Petitioner**Versus**

1. Kamal Sethia S/o Rajman Sethia, Aged About 29 Years R/o Village Negiguda P.S. Frezerpur District Bastar Chhattisgarh. (Driver).
2. Dharmendra Tiwari, S/o Late Kalika Tiwari, Aged About 35 Years R/o Motitalab Para Ramaiya Ward Jagdalpur District Bastar Chhattisgarh. (Owner).
3. Branch Manager, The Oriental Insurance Co. Ltd. Branch Office Jagdalpur, District Bastar Chhattisgarh.

---Respondents

For Petitioner	:	Mr. A.L. Singroul, Advocate.
For Respondent No.3.	:	Mr. Raj Awasthi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****07.01.2019**

1. The petitioner is claimant whose application for disbursement of the amount deposited in fixed deposit has been rejected by the impugned order.
2. Learned counsel for the petitioner submits that without considering the matter of **A.V. Padma & others v. R. Venugopal & others**¹ in which 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 v. Susamma Thomas and others**² have 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 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, the impugned order has been passed. 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

1 2012(2) CGLJ 322

2 AIR 1994 SC 1631

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 fund 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 filed 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."

3. In the light of observations made by their Lordships of the Supreme Court in the matter of **A.V. Padma** (supra), facts of the present case are examined, it is quite vivid that the petitioner has filed an application along with affidavit for withdrawing Rs. 3,00,000/- for making construction/repairing of room &

kitchen in his house, which is uncontroverted on record. There is nothing on record to show that petitioner need no money for such a construction work or construction work itself is not necessary.

4. In the light of the decision of the Supreme Court judgment (supra) the impugned order is set aside and the matter is remitted back to the Motor Accident Claims Tribunal for considering the application afresh in accordance with law after hearing the parties.
5. The writ petition stands finally disposed off. No order as to cost(s).

Sd /-

(Sanjay K. Agrawal)

Judge