

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.158 of 2022

Nachika Neela

.... ***Appellant***
Mr. S. Das, Advocate

-versus-

Union of India

.... ***Respondent***
Mr. S. Panda, Advocate for UoI

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
22.07.2022

Order No.

01.

1. Heard Mr. S. Das, learned counsel for the Appellant and Mr. S. Panda, learned counsel for Union of India.

2. Present Appellant was the claimant before the Railway Claims Tribunal, Bhubaneswar. She filed Case No.OA (IIU)/203/2017 claiming compensation on account of death of her brother, namely, Ramiya Nachika in an untoward incident dated 29.11.2013. The learned Tribunal granted compensation of Rs.8,00,000/- with further direction to invest 90% of the amount in 72 fixed deposits for a period of 1 to 72 months in ascending order in any Bank. The rest of the amount of Rs.80,000/- along with interest accrued upon the total compensation amount, if any, shall be released in favour of the claimant to be deposited in her Savings Bank Account near her place of permanent residence.

3. Such condition for investment of 90% amount in the fixed deposit and 10% to be kept in the Savings Bank Account near the place of residence of the claimant is the subject matter of challenge before this Court in the present appeal.

4. Learned counsel for the claimant-Appellant submits that the claimant being a major woman has the right of use of her choice of the entire amount of compensation granted in her favour and she being the owner of the amount, the learned Tribunal cannot restrict the use of the same in such a manner. In support of the submission, learned counsel for the Appellant places reliance on a decision of this Court dated 09.09.2021 rendered in FAO No.262 of 2020 (*Kabi Pradhan and another vs. Union of India*) and batch by a coordinate Bench.

5. In the said decision of *Kabi Pradhan* (supra), this Court while interpreting Rule 5.1 to 5.4 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (in short '1990 Rules') have held that, "*When the discretion is conferred on the learned Tribunal to determine the mode of payment of the awarded amount as per Rule 5.1 of the Amendment Rules, learned Tribunal has to exercise the same judiciously and see that withholding disbursal of any amount does not cause any injustice to the claimant.*" This Court has further observed that the Appellants in those cases were adults, without unsound mind or illiterate and no disabling factor was there which may impair judicious use of the compensation amount. Accordingly, the

Court directed for disbursal of the entire award amount in favour of those Appellants by liquidating the fixed deposits.

6. A complete reading of the decision of this Court rendered in the case of *Kabi Pradhan* (supra) thus makes it clear that on the given facts of those cases, the disbursal of entire compensation amount in favour of the respective Appellants were imperative in absence of any cognizable material to attract protection of the sum awarded in terms of Rule 5.1 of 1990 Rules.

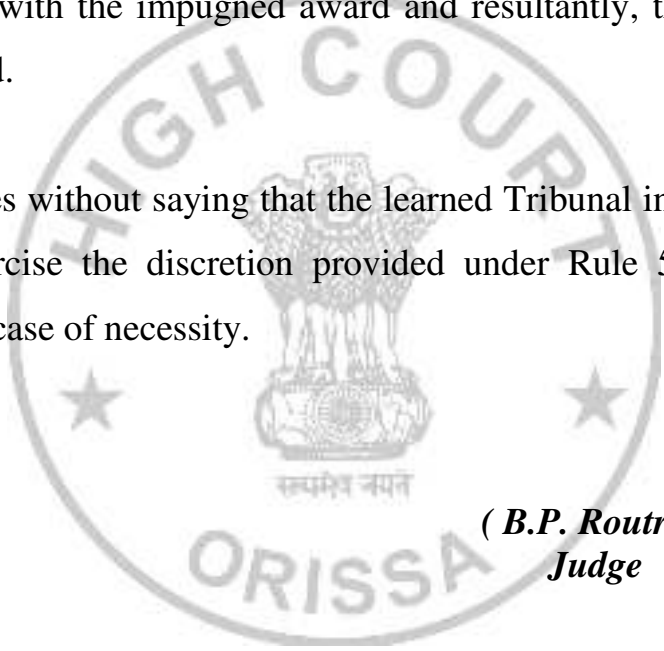
7. Now coming to the facts of the instant case, it is seen that the present claimant is a woman aged about 23 years only. As it appears from the memorandum of appeal and the impugned award, she has already lost her parents and no other near relative of her is there. Nothing has been stated in the memorandum of appeal with regard to her level of literacy. Her educational qualification is not disclosed. Her status as single or married is also not disclosed. Therefore, these facts of the case at hand are completely different from the facts of those cases covered in the earlier decision of *Kabi Pradhan* of this Court and as such is distinguishable.

8. Rule 5.1 of 1990 Rules authorizes the learned Tribunal to pass appropriate directions in the matter of disbursal of the award to sub-serve justice having regard to the illiteracy or other disabling factors impairing the judicious use of the compensation amount. Thus having regard to the facts of the present case where the claimant is appearing an unmarried woman aged about 23 years,

who has already lost her parents and is without any near relative, I am not in favour of modifying the directions of the learned Tribunal about investing 90% of the amount in fixed deposits which are to be released in ascending order for 72 months. Further, no illegality is seen in the direction of the learned Tribunal to keep the amount in any Savings Bank Account of a Bank near the place of her residence.

9. In view of the discussions made above, no ground is seen to interfere with the impugned award and resultantly, the appeal is dismissed.

10. It goes without saying that the learned Tribunal in its wisdom may exercise the discretion provided under Rule 5.3 of 1990 Rules in case of necessity.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, with the motto 'सत्यमेव जयते' (Satyameva Jayate) inscribed below it. The words 'HIGH COURT' are written in an arc at the top, and 'ORISSA' is written in an arc at the bottom. Two five-pointed stars are positioned on either side of the central emblem.

(B.P. Routray)
Judge