259 +107 **2023:PHHC:055894**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-2809-CII-2023 in/and
CR-2515-2021 (O&M)
Date of decision: 11.04.2023

SUDESH …Petitioner

VS

VIJAY PAL @ VIJAY SINGH AND OTHERS …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajiv Kumar Saini, Advocate and
Mr. Bhim Singh, Advocate,
For the petitioner.

Mr. Apoorva Arya, Advocate for
Mr. Jagmohan Ghumman, Advocate,
For respondents No.1 and 2.

Mr. Rajbir Singh, Advocate,
For respondent No.3.

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ARUN MONGA, J. (ORAL)
CM-2809-CII-2023

Application is allowed, as prayed for.

Document at Annexure P-4 is taken on record, subject to all just exceptions.

Main case

Impugned herein is what is stated to be an erroneous approach adopted by learned Tribunal below in passing the directions to pay only an amount of Rs.2 lakh out of total compensation of Rs.25,43,050/-to claimant/petitioner, who is widow of victim who lost his life in accident in question and remaining amount has been ordered to be kept in the shape of 20 Fixed Deposit Receipts of equal amount and each of those to be disbursed on annual basis with effect from date of disbursement of first instalment of Rs.2 lakh.

2. Whether or not such a course could have been adopted is the limited question for determination.

3. Controversy in hand is no more *res integra*. Reference may be had to a judgment rendered by Rajiv Narain Raina, J., (as he then was in this Court) wherein a similar situation arose and deprecating such approach on the part of learned Tribunal it was, thus, observed :

> *"5. This revision petition has been preferred under Article 227 of the Constitution [there being no other remedy] arising out of the execution proceedings to recover the balance amount. The entire compensation has been deposited by the Insurance Company before the Tribunal. The question of disbursement of the remaining sum adjudicated remains as a grievance in this appeal pending payment. Mere deposit without access to money is no good for the petitioner. He needs the money now. Counsel says the money cannot be held back for any reason whatsoever so that, one day, it does not form part of a heritable estate of the claimant after his demise. There is in essence the simple request. But what are the impediments to hold it back, even when the Tribunal recognizes the right in the order to receive the balance amount as decreed?*
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> *6. The Tribunal by its impugned order dated 16.12.2019 has held otherwise, holding that the application dated 19.09.2019 (Annex P-4) filed post-judgment of the Supreme Court claiming disbursement of the amount, observing in its order 15.10.2019, as follows:*
>
> > *"After going through the settled law, <u>this Tribunal is the view that certainly the applicant/claimant has right to get the amount released pre-maturely but for the said purpose, he has to move appropriate application mentioning the purpose for which the amount is required and after considering the facts of the case, the application will be decided while keeping in view the interest of the applicant.</u>*
> >
> > *On perusal of the application, it is clear that prayer has not been made in the application for pre-mature release of FDR but it has been pleaded that condition of depositing of the amount of compensation in the FDR for two years imposed by the learned Tribunal vide Award dated 25.01.2013 has already been completed, so the amount has been wrongly deposited in the FDR. It is clear from the record that no fresh condition has been imposed for deposit of the amount of compensation in the FDR but only in pursuance to the directions given in Award dated 25.01.2013, the amount has been deposited in the FDR on 13.09.2019, so the said FDR will mature on 12.09.2021.*

At this stage, learned counsel for the applicant requested for granting two weeks' time to go through the other judgments on this point and further submitted that he will address arguments after through the said judgments.

On request, case is adjourned to 02.11.2019 for further proceedings."

7.If this is the line of reasoning adopted by the Tribunal, it mustgo back to the learning curve back to law school. The High Court does not sit to cure stupidity and expects its judicial officers in superior judicial service to do better.

8. It bears out that the amount has been deposited in FDR on 13.09.2019 by the insurer company, which is unlawfully fixed for maturity on 12.09.2021 as though the Tribunal was dealing with the case of a minor. When the petitioner was faced with the reluctance of the Tribunal to release the amount before 12.09.2021 ordained by it, he had to take time to go through the other judgments on this point' [as per zimni order] and to 'address arguments after going through the said judgments'. No counsel in his senses would have made such request if he wasn't stone walled by a cussed Tribunal unable to understand the basic law. And yet he has been deputed to man it, to the peril of the claimant holding an executable decree.

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11. The line of thinking has been compounded by the Tribunal by a misunderstanding of the law. In its order dated 16.12.2019 the Tribunal has even without going through the judgments placed for its consideration (as noticed in para 8, supra), it has off-handedly dismissed the application for release of the balance amount put in FDR on the untenable ground that counsel "has not shown any ground to release the amount". The Tribunal has fallen in grave error in leaving it to the petitioner to file a separate petition for pre-mature release of the amount in case he needs the amount lying in the FDR. I guess the Tribunal meant really required. He should never have asked that question from the petitioner as it was not his personal property or anyone else's. This was not the business of the Tribunal. In my view, the petitioner was not required by law to move any application or given explanation of how he intends to spend this money, if it is released in his favour before the maturity of the FDR. All he was required to do was to shoot a single one request- Give me my money, I'm the one suffering, not you.

12. I am afraid the Tribunal has shown complete lack of probity in passing the perverse order's postponing the rights of the petitioner to the future event of maturity of an FDR lying in the Bank even when he had a right to the money on the date when the deposit was made by the InsuranceCompany on 13.09.2019 and report sought from the office whether the amount stands deposited by the insurer.

13. The Motor Accident Claims Tribunal is not a financial adviser or chartered accountant to advice a person on how one's money deserves to be spent, even if the spending spree is profligate. Due to this uncaring and irresponsible order passed by the Tribunal which is impugned, the petitioner has had to *approach this Court at much time and expense spent on engaging a lawyer to represent him, which could have been easily avoided by releasing the amount to the true owner on verification of identity, without any questions asked, even on a simple application which was fortunately nictitated by an unreasonable reluctance on the part of the Tribunal to break an FDR ordered to be deposited earlier before the appeals stood exhausted up to the apex court. The Tribunal is only to satisfy itself that payment of sum awarded to claimant stands indemnified to protect insurer against double payment.*

14. In view of the above position obtaining, the petition is allowed at the first hearing and the impugned order dated 16.12.2019 (Annex P-5) is held to be unlawful and is therefore quashed. The Tribunal is directed to release the enhanced compensation to the petitioner forthwitheven without receiving any further application or request by the petitioner to the Tribunal, but not before verification of his identity. For this, the PAN number, Aaadhar card, Driving License etc. [at the discretion of the executing Tribunal] may be seen and a copy retained on the file as proof of payment by the Insurer to the Insured of the offending vehicle.

*15. *Footnote: [refasterisk mark in paragraph 1 above]:-See rule in McGregor on Damages (14th Edn.) at Para 1157, referring to the heads of damages in personal injury actions, learned author stating as under:*

> *"The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items viz. the loss of earnings and [pic] other <u>gains which the plaintiff would have made had he not been injured</u> and the medical and other expenses to which he is put as a result of the injury, and the courts have subdivided the non-pecuniary losses into three categories viz.pain and suffering, loss of amenities of life and loss of expectation of life. Besides, the Court is well advised to remember that the measures of damages in all these cases should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure. The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to 'hold up his head among his neighbours and say with their approval that he has done the fair thing, is quite apposite to be kept in mind by the Court in assessing compensation in personal injury cases."*

16.The loss is not only for the injury but also for the injured person's gains he would have made had he not been injured. To sign off, I would say this is a wise lesson to be learnt by all those involved in MACT litigation. A copyof this order be sent to the Motor Accident ClaimTribunals across the territories this Court administers for their guidance.”

4. I am in respectful agreement with the views expressed by my learned brother and I see no reason as to why instant petition be not allowed.

5. Apart from that, learned Tribunal also committed manifest error in not disbursing the compensation, given that widow has no independent source of livelihood after the only earning member of family i.e., her husband lost his life in accident. In addition thereto, widow has also sworn an affidavit stating that her son had taken a loan of Rs.10 lakh from a finance company, namely, M/s IIFL Finance which is yet to be paid.

6. Learned counsel for petitioner submits that due to loss of life of her husband followed by pandemic, her son is currently not earning and he has not been able to pick up his business post pandemic. He further submits that while on one hand, widow-petitioner and her son are living in acute penury and on the other hand, money awarded to them has been kept in fixed deposit at a much lower interest than what eventually they have to pay on the outstanding loan.

7. Be that as it may, apart from these reasons, which have been noted herein above only in the passing my agreement with the views expressed by my learned brother alone would suffice for allowing the petition and therefore, it is irrelevant whether any loan was taken or not.

8. In the premise, instant revision petition is allowed. Learned Tribunal is directed to disburse the entire amount of compensation forthwith.

(ARUN MONGA)
JUDGE

11.04.2023
Vandana

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No