

Ashalata Debnath and ors. Vs. Krit Kumar Das and ors.

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Court : Guwahati

Decided On : Jan-22-1998

Judge : A.K. Patnaik, J.

Appeal No. : Civil Rule Nos. 27 and 28 of 1998

Appellant : Ashalata Debnath and ors.

Respondent : Krit Kumar Das and ors.

Advocate for Pet/Ap. : A. Chakraborty and P.K. Paul, Advs.

Judgement :

A.K. Patnaik, J.

1. These two writ petitions under Article 226 of the Constitution have been filed against the order dated 6.11.97 passed by the Motor Accidents Claims Tribunal, West Tripura, Agartala in case No. Misc. (MAC) 59 of 1997 arising out of T.S. (MAC) 253 of 1997 and in case No. Misc (MAC) 60 of 1997 arising out of TS (MAC) 252 of 1997. By the said orders, the Tribunal while allowing compensation of Rs. 50,000/- towards no fault liability directed that 90 per cent of the awarded compensation to be deposited by the United India Insurance Co. Ltd. would be invested in long-term fixed deposit schemes at least for five years of a nationalised bank in the name of Ashalata Debnath, petitioner No. 1 in Civil Rule No. 27 of 1998 and in the name of Namita Roy, petitioner No. 2 in Civil Rule No. 28 of 1998,

who are the mothers of the victims of the accident, and further directed the bank not to allow any advance or loan against the said amounts and to pay only the interest that may accrue in the said fixed deposit amounts to the petitioner No. 1 in Civil Rule No. 27 of 1998, Ashalata Debnath and the petitioner No. 2 in Civil Rule No. 28 of 1998, Namita Roy.

2. Mr. A. Chakraborty, learned Counsel appearing for the petitioners, assisted by Mr. P.K. Paul, contended that the aforesaid directions of the Tribunal for depositing 90 per cent of the amount of no fault liability of Rs. 50,000/- were perhaps given following the direction of the Supreme Court in the cases of General Manager, Kerala State Road Trans. Corpn. v. Susamma Thomas 1994 ACJ 1 (SC) and Lilaben Udesing Gohel v. Oriental Insurance Co. Ltd. 1996 ACJ 673 (SC). He contended that the Tribunal had not properly appreciated the guidelines laid down by the Apex Court in the aforesaid two decisions and that the direction for deposit of the compensation of Rs. 50,000/- towards no fault liability in the fixed deposits was not correct on the facts and in the circumstances of the case. Mr Chakraborty further argued that the petitioners would have to incur a lot of expenses and the Tribunal should have kept in mind this important fact and should not have directed that 90 per cent of the aforesaid compensation should be deposited in the fixed deposits. He further pointed out that not all the claimants before the Tribunal are minors or widows and that only two out of the four claimants in each case are minors and this fact also has been ignored by the Tribunal while directing deposit of the amounts in fixed deposits.

3. On perusal of the judgment of the Supreme Court in the case of General Manager, Kerala State Road Trans. Corpn. v. Susamma Thomas 1994 ACJ 1 (SC), I find that the Supreme Court quoted the guidelines laid down by the Gujarat High Court in the case of Muljibhai Ajarambhai Harijan v. United India Insurance Co. Ltd. 1983 ACJ 57 (Gujarat), and observed that the guidelines should be borne in mind by the Tribunals in the cases of compensation in accident cases. One of the guidelines laid down by the Gujarat High Court in the said case of Muljibhai Ajarambhai Harijan v. United India Insurance Co. Ltd. (supra) is that the Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor invested in long term fixed deposits at least till

the date of the minor attaining majority. But in the said guideline it has further been stated that the expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn. Similarly, in another guideline in the said judgment of the Gujarat High Court it has been stated that in all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency and to meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one fixed deposit so that if need be one such F.D.R. can be liquidated.

4. On a perusal of the judgment of the Supreme Court in the case of Lilaben Udesing Gohel v. Oriental Insurance Co. Ltd. 1996 ACJ 673 (SC), the Supreme Court in para 17 of the judgment has observed that even though the guidelines laid down in Muljibhai's case 1983 ACJ 57 (Gujarat), have been approved and applied by the Supreme Court in earlier cases, many Motor Accidents Claims Tribunals and even some of the High Courts in other parts of the country do not follow them. The Supreme Court has further observed that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or agreement between the parties, the Court/Tribunal must apply these guidelines. In the said case, the Supreme Court has added a further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the fixed deposit receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the Court/Tribunal which ordered the deposit.

5. It is perhaps because of these judgments of the Supreme Court in the case of General Manager, Kerala State Road Trans. Corpn. v. Susamma Thomas 1994 ACJ 1 (SC) and Lilaben Udesing Gohel v. Oriental Insurance Co. Ltd. 1996 ACJ 673 (SC), relating to guidelines to be followed in respect of claimants who are minors that the Tribunal has passed the impugned orders directing that 90 per cent of the awarded compensation towards no fault liability should be deposited in fixed deposits for at least 5 years in a nationalised bank. But what the Tribunal has lost sight of is that not all the claimants are minors and that only two of the claimants were minors in each of the two cases in which the impugned orders have been passed. Further, the Tribunal has not taken into consideration the fact

that as per the aforesaid guidelines the withdrawal of a reasonable amount towards expenses to be incurred by the guardians was to be permitted.

6. Considering these aspects of the matter, I am of the opinion that out of the compensation amount of Rs. 50,000/- towards no fault liability in each of the two cases, a sum of Rs. 30,000/- will be allowed to be withdrawn by the petitioner No. 1 in Civil Rule No. 27 of 1998, Ashalata Debnath and a sum of Rs. 30,000/- will be allowed to be withdrawn by the petitioner No. 2 in Civil Rule No. 28 of 1998, Namita Roy by accounts payee cheques in their names and delivered to them on proper identification and the remaining amount in each case will be kept in fixed deposits of equal amounts in a nationalised bank carrying highest rate of interest in the name of and for the benefit of each of the two minors in Civil Rule No. 27 of 1998 and the two minors in Civil Rule No. 28 of 1998 with a note on the fixed deposits that no loan or advance would be granted against the fixed deposits without the express permission of the Motor Accidents Claims Tribunal.

7. With the aforesaid observations and direction, these two writ petitions are disposed of. However, considering the entire facts and circumstances of the case, the parties shall bear their own costs.