

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 5501 of 2022**

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DHAVALKUMAR ASHOKBHAI AGHERA
Versus
RELIANCE GENERAL INSURANCE CO. LTD.

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Appearance:

MR.HIREN M MODI(3732) for the Petitioner(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 08/08/2022

ORAL ORDER

1. Mr. Dhomse, learned advocate with Mr. Hiren Modi, learned advocate submitted that the petitioner is in Indian Air Force and serving as Radar Operator (Air-man) at Gwalior Mahajpura and since the family is at Keshod and the children need permanent residence for education, Mr. Dhomse submits that the petitioner has agreed to purchase the property for the value of Rs. 20 Lakh and towards the earnest money, the applicant has already paid Rs. 2 Lakh, but the rest of the payment is required to be made. The claimant had purchased the property vide registered Agreement to Sell dated 1.9.2020 and for that purpose, the petitioner had moved the concerned Tribunal for premature withdrawal in FDR, pursuant to the compensation granted in MACP No. 524 of 2017 where the claimant's petition was partly allowed by order dated 20.11.2019. Mr. Dhomse submits that the

petitioner has taken Bank loan for the house.

2. Mr. Dhomse, learned advocate submits that the learned Tribunal had failed to invoke the *Parens Patriae* jurisdiction which it possess and has failed to appreciate the nature of the cause for withdrawal and has not considered documents on record as cogent evidence.

3. The learned Tribunal, while rejecting the application had observed in Paras-9 and 10 as under:

"9. The present application is by an applicant seeking liquidation of FD amount stating that he needs money since he is buying a house. The reason is palpably a ruse for diluting the conditions to the Order and snipping it off as a frill. The agreement of a fixed property like a residential house curiously is not a registered document. It is only a notarised document on Rs.300/- stamp paper. yet, assuming that indeed the applicant is purchasing a house, then the decision is a big decision in life and does not depend on the wager of liquidation of fixed deposit. The reasons advanced is a subterfuge.

10. In view of the foregoing reasons, the tribunal sees the application as a hoax and its

reasons subterfuge for premature withdrawal. The conditions in the Awarded amount and the Judgment of the Prior Co-ordinate tribunal mandating FDR were and are not frill."

4. Mr. Dhomse has placed reliance on the judgment in the case of **A.V. Padma & Ors. Vs. R. Venugopal & Ors., reported in (2012) 3 SCC 378** to contend that the Tribunal is required to give a thoughtful consideration to the genuine requirements of the claimant and should avoid mechanical approach ignoring the object and spirit of the Act. A.V. Padma's case (supra) refers to the guidelines issued in the case of **General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas & Ors., reported in (1994) 2 SCC 176**. In Susamma Thomas's case (supra), while approving the judgment of the Gujarat High Court in the case of **Muljibhai Ajarambhai Harijan Vs. United India Insurance Co. Ltd., reported in 1982 (1) GLR 756**, the Apex Court has offered the following guidelines:-

"(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses

incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property such as, agricultural implements, rickshaw, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semiliterate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the

Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may

be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. 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.”

5. In the case of A.V. Padma (supra), while appreciating the guidelines issued in the case of Susamma Thomas (supra), it has been observed as under:-

“7. The expression used in guideline No. (iv) issued by this Court is that in the case of literate persons also the Tribunal may resort to the procedure indicated in guideline No. (i), whereas in the guideline Nos. (i), (ii), (iii) and (v), the expression used is that the Tribunal should. Moreover, in the case of literate persons, the Tribunal may resort to the procedure indicated in guideline No. (i) only if, having regard to the age, fiscal background and strata of the society to which the claimant belongs and such other considerations, the

Tribunal thinks that in the larger interest of the claimant and with a view to ensure the safety of the compensation awarded, it is necessary to invest the amount of compensation in long term fixed deposit.

8. 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.

9. 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.

10. 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 the case of A.V. Padma (supra), the guidelines so issued in the case of Susamma Thomas (supra), has been clarified. Hence, it could be said that sufficient discretion has been given to the tribunal to exercise, considering the need of the applicant-claimant. In case of literate person, the Tribunal is required to give relaxation by not adopting pedantic approach of investing the money in long term FDR without recording reasons for investing the money in long term deposits. It has been observed in the case of A.V.Padma (Supra) that the Tribunal are often taking a very rigid stand and are mechanically ordering, almost in

all cases, the amount of compensation to be invested in long term FDRs. The deposited money are of the claimants. The literates can prudently exercise discretion, manage their funds and can individually decide about systematic planning for investing the money. Here in this case, the present applicant, as an Air Force person, proposes to purchase a house and intends for permanent residence at Keshod. Mr. Dhomse submits that at the relevant time when the application was moved before the Tribunal for premature withdrawal of the FD, notarised Agreement of Sale was produced before the Tribunal concerned and thus, the learned tribunal found the said, as not inspiring confidence and had not accepted the same since it was not registered at Sub-registration Office and submits that subsequently in the month of September, 2020, a registered Sale-Agreement was executed on payment of the earnest money and home-loan was procured but unfortunately the said document could not be produced before the Tribunal prior to the date of order. Mr. Dhomse, thus, prays for considering the said registered document of Sale as a cogent evidence, towards the prayer of premature withdrawal of the FD.

7. In the present case, since the applicant is in Indian Air Force and serving as Radar Operator (Air-man) at Gwalior Mahajpura and since the family is at Keshod, and

the registered Agreement of Sale is produced on record which substantiate the fact that he proposes to purchase the property and for payment of the consideration money, has made prayer for withdrawal, the present claimant would know about his own welfare and thus keeping in view the guidelines, as laid down in Susamma Thomas's case (supra), and keeping in mind observation in the case of A.V.Padma (Supra), if the prayer of the applicant is not considered, then it would result into serious injustice and hardship to the claimant.

8. Thus, taking into consideration the circumstances as pleaded by the petitioner - claimant, the petition is allowed and the petitioner is permitted to have a premature withdrawal of the FDR in connection with MACP No. 524 of 2017. The total amount so deposited in FDR, is ordered to be granted to the claimant and the Bank concerned is directed to pay the amount along with interest so accrued on the said FDR to the petitioner-claimant on receipt of this order. Direct service is permitted.

(GITA GOPI,J)

SAJ GEORGE