

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 13772 of 2022

=====

BIPINCHANDRA BABULAL THAKKAR
Versus
GOVINDBHAI M PRAJAPATI

=====

Appearance:

MR TIRTH NAYAK(8563) for the Petitioner(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 1,2

=====

CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 02/08/2022

ORAL ORDER

1. Mr. Tirth Nayak, learned advocate for the petitioner submits that the petitioner, aged about 62 years, is before this Court challenging the order dated 27.6.2022 passed by the learned Motor Accident Claims Tribunal (Aux), City Civil Court, Ahmedabad in MACMA no.202 of 2022 in connection with MACP no.460 of 2010. Mr. Tirth Nayak submits that the application was for premature withdrawal of FDR no.290603 deposited in the Central Bank of India, Mithakhali Branch, Ahmedabad as per the directions given in the judgment and award passed on 8.8.2018 in MACP no.460 of 2010. Mr. Tirth Nayak submitted

that the application came to be rejected, whereby the Tribunal declined to appreciate the ground for premature withdrawal as having received P.R. of USA and has inclination to shift to America.

2. Mr. Tirth Nayak submitted that the petitioner's daughter is at America and because of his age, he proposes to stay along with her and since he has received P.R. of USA, he already got his tickets booked for September 12, 2022. Mr. Nayak further submitted that the petitioner is a senior citizen and because of his advancing age, he would be in need of money for his own medical purpose and further the money would be helpful as that would give him the freedom of expending for his own purpose.

3. Mr. Tirth Nayak 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 semi-literate 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."

4. 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."

5. The Tribunal observed that the only ground seeking premature withdrawal is that he got P.R. of USA and is going to America, which the Tribunal did not consider as a valid ground for the premature withdrawal and has observed that there is no other valid, genuine and reasonable ground and therefore, premature withdrawal of FDR was not granted. It is required to be noticed that the claimant has retired from his work as a wholesale book seller. The Claim Petition was filed for the injury, which he sustained during the accident

occurred on 29.6.2010. He was granted compensation amount of Rs.6,52,730/- at the rate of 7.5% per annum and 30% of the amount was given to him by way of a cheque, while 70% of the amount was deposited in the FDR no.290603 since 22.2.2019. As per the contention, he had been residing in USA since 2017 along with his daughter on the basis of Permanent Resident Card of USA and because of his age, he is now planning to settle permanently in USA. Necessary documents in support of his contention have been produced on record.

6. It appears from the order that the learned Tribunal has failed to consider the object and the intention of the directions so given in Susamma Thomas's case (supra). The present claimant was a trader. Further, he proposes to settle down in USA. The amount invested in the FDR has now become his necessity as he wants to use the same money for his own purpose. The intention of putting the claimant's money in the FDR is for his own benefit to ensure safety of the

compensation amount so awarded. Further, the amount as prayed for at the premature withdrawal is for meeting with the personal exigencies of the life and the Tribunal ought to have considered the same and should have granted the amount as the compensation money is for the claimant. Here in this case, the claimant proposes to settle permanently in USA and the amount invested in FDR on the maturity date would go to the claimant. However, in case if he is not present in India to receive the same, the said amount would be of no use to him and thus, this fact ought to have been kept in mind while considering the bonafides/genuineness of the grounds so raised for the prayer of premature withdrawal.

7. The guidelines, as laid down in Susamma Thomas's case (supra), cast a responsibility on the Tribunal to pass appropriate orders after examining each case on its own merits. In case of the present petitioner, there is no scope of any exploitation since the claimant knows

and understands about his own welfare and thus, necessary orders are required to be passed taking into consideration the larger interest of the claimant as mechanical disposition of the application without proper application of mind as observed in the case of A.V. Padma (supra) results in serious injustice and hardships 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 FDR no. 290603. 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)

Maulik