

01.12. 2023
item No. 6
n.b.
ct. no. 551

FMAT 721 of 2019

with

IA No. CAN 1 of 2019(Old No. CAN 6945 of 2019)

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CAN 2 of 2019(Old No. CAN 6948 of 2019)

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CAN 3 of 2023

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CAN 4 of 2023

Biren Dey & Anr

Vs.

Union of India

Mr. Soujanya Bandopadhyay,
..... for the appellants.
Mr. Avinash Kankani,
..... the respondent.

The instant appeal has been preferred against the judgment and award dated April 4, 2019 passed by the Vice Chairman Member(Judicial) in claim application No.OA(IJu)/Kol/2014/0264 by the learned Railway Tribunal.

The present appellant being the claimant preferred an application for compensation before the learned Tribunal on the ground that their son died in an untoward accident while was travelling through a train. The present appellant/claimants are the fateful parents of the deceased. The learned Tribunal after hearing the parties and allowed the claim application and directed the General Manager, Eastern Railway to pay the compensation amounting to Rs.8,00,000/-. It has been

directed by the claim Tribunal that the award has to be specifically paid within 60 days failing which, the award was carry 9% interest per annum from the date of default till the actual realisation. It has been further directed by the same award that the claim has to submit details of bank account of any nationalized bank. It has been further orderd by the Tribunal that the 90% of the awarded amount shall be remained in fixed deposit scheme in a nationalized bank for five years and the rest Rs.10% of decreetal amount shall be disbursed through ECS in the account of the claimants.

Being aggrieved by and dissatisfied with such observation, the present appeal has been preferred. The ground regarding the non-payment of decreetal amount within stipulated period or non-payment of the same after furnishing all the bank accounts to the Railway Authority can be decided a the proceeding of execution, which could be proceeded by the claimants before the learned Tribunal in a separate proceeding. The only merit of this appeal appears in respect of the direction of the learned Tribunal regarding deposit of 90% of the awarded amount in fixed deposit scheme

Learned advocate on behalf of the Union of India appearing before this Court has submitted that the mode of payment as directed by the learned Tribunal is conformity with Rule 5 of the Railway Accident and Untoward Accident(Compensation Rule) 1990. The rule 5

also in conformity with the observation of the Hon'ble Delhi High Court passed in **Geeta Devi Vs. Union of India** reported in **2019 SCC OnLine Del 8919**.

He further argued that the observation of the learned Tribunal is in respect of the rule and the direction of the Hon'ble High Court. So, the observation is very much correct and it cannot be set aside in the appeal.

Heard the learned advocate and perused the Rule 5. The said Rule read as follows:

5.1. The Tribunal may, in order to protect the sum awarded to the claimant, having due regard to the illiteracy or other disabling factors impairing the judicious use of such sum issue directions for disbursing the award in terms of annuities, fixed deposits or other suitable mode as shall subserve justice.

5.2. If any of the claimants is a minor or person of unsound mind, the Tribunal may give liberty to the guardian ad litem to use the interest accruals on the deposit that shall be made during the minority for maintenance.

5.3. Nothing in this rule shall limit the power of the Tribunal to make modifications of the mode of disbursement for reasons to be stated in writing depending on the exigencies requiring liquidation of any corpus created for annuity or premature closure of fixed deposit, for the benefit of the claimant.

5.4. The orders dated 21st April, 2017, 24th May, 2019 and 6th November, 2019 of Hon'ble High Court of

Delhi in FAO No.22/2015 and CM Application No.4501/2015 in Geeta Devi V. Union of India, relating to disbursement of compensation shall be read as part of this rule.

The para 16 of the Hon'ble Delhi High Court in Geeta Devi has observed as follows:

“16. Many of the claimants are drawn from rural areas with low levels of literacy and lower levels of making appropriate decision for the use of amounts guaranteed under the awards. There are several instances of their exploitation by middlemen and touts operating in the field. The scope for such exploitation is itself one of the incentives for fomenting bogus claims, fabricated documents and duplicate claims in different Benches of the Tribunal for the same cause of action. The availability of bulk funds in the name of an ill-informed claimant is also a cause for exploitation. A scheme for protection of the amount due to such a claimant is the need of the hour. Earlier, this Court has involved 21 nationalized Banks in dialogue to evolve a scheme of annuities for disbursement of claims. They have been ordered already to be implemented in this case, vide directions passed on 22nd February, 2019. This scheme as applied to motor accident claims has been approved by the Supreme Court in its order dated 05th march, 2019 in Krishnamurthi V. New India Insurance Company, SLP© No. 31521-31522 of 2017. A statutory rule backing will

therefore best serve the interest of the litigant in the manner set out below.”

In perusing the rule as well as the basic foundation of the rule i.e. the direction of Hon'ble High Court in **Geeta Devi(supra)**, it appears that Hon'ble High Court observed that for the purpose of securing the payment to the poor litigants, who do not have necessary understand of the amount of huge money and the procedure as well as to save them from exploitation, the rule was framed. It has to be applied in a fit case. The learned Tribunal has not observed that far the purpose of securing the payment particularly towards the claimants the rule has been followed aside and directed that the 90% would be remained in fixed deposit scheme.

In perusing the impugned award of the learned Tribunal, it appears that the present appellant as well as the claimants are the educated persons and they personally appears before the learned Tribunal. There are no materials to suggest that the claimants may be employed. Thus, I find no justification to adhere to the rules in this particular case. Accordingly, the observation of the learned Tribunal in pars 8.1 of the judgment itself appears to be not justified.

The respondent/Union of India is directed to disburse the claim amount directly to the account of the claimants as directed in the order impugned.

CAN 4 of 2023 was filed by the claimant/appellant on the prayer that 9% interest may be directed to be paid by the respondent authority as they have failed to deposit the decretal amount within 60 days. The scope and purpose for passing such direction is within the ambit of a executing court. This appellate court has no jurisdiction to entertain the instant prayer. Accordingly all the prayers made before this Court which came under purview of the executing court is kept open. The claimant is at liberty to prefer appropriate executing proceeding to execute award passed by the learned Tribunal.

Accordingly, the instant appeal is disposed of with the above observation.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)