Before Rajiv Narain Raina, J.

PARMINDER SINGH—*Petitioner*

versus

THE NEW INDIA INSURANCE CO. LTD.—*Respondent*

CR No.555 of 2020

January 27, 2020

Motor Vehicles Act, 1988—Judicial restraint on release of enhanced compensation—Award passed by Tribunal enhanced by High Court and Supreme Court—Entire compensation deposited by Insurance company before Tribunal—Execution petition to recover balance amount dismissed on ground that appropriate purpose has not been mentioned—Challenged—Held, mere deposit without access to money is no good for petitioner—Non release of adjudicated claim by imposing pre -condition amounts to abdication of duty cast on Tribunal—Tribunal is not to advise a person on how one's money is to be spent—Tribunal only has to satisfy that payment of sum awarded to claimant stands indemnified to protect insurer against double payment— Petition allowed.

Held that, these precedents are meant to convince the Tribunal that imposing conditions on release of compensation by a fixed period time causes hardship to the claimant/s, as the original owner of the moveable property [money], holding that there cannot be a judicial restraint on release of what has been granted to him by the Tribunal and confirmed until the Supreme Court.

(Para 9)

Further held that, non-release of the adjudicated claim to the petitioner and see it as an act of abdicating duty cast on the Tribunal in execution proceedings when asked to satisfy the Supreme Court decree forthwith and without imposing any pre-condition or postponing the right compensation to an adjournment.

(Para 10)

Further held that, 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.

(Para 11)

Further held that, 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.

(Para 13)

Shakti Mehta, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. oral

(1) In the appealable award of 25.01.2013 delivered by the Motor Accident Claims Tribunal, Panchkula, the claimant/petitioner secured compensation assessed at Rs.10,43,666/- for the injuries* [see foot note (para 15): loss of "other gains which the plaintiff would have made had he not been injured"] suffered by him as a result of the motor accident which befell on 29.03.2009. The claimant/petitioner filed an appeal for enhancement to this Court by way of presenting FAO No.10473 of 2014 and the compensation was enhanced on 20.9.2017 and the order of the MACT, Panchkula was modified awarding a total sum of Rs.21,06,000/-less already paid.

(2) Feeling still aggrieved, the petitioner approached the Supreme Court by filing SLP (Civil) No.23153 of 2019 in which leave was granted and the petition was converted into Civil Appeal No.5123 of 2019. The Supreme Court by its final judgment and order dated 1.07.2019 have enhanced the compensation awarding amounts under different heads tabulated in Para. 6 of the award which reads as follows:

> "6. In view of the aforesaid discussion, the appellant is entitled to the following amounts:
>
> (i) Rs.32,40,000/- to be awarded towards loss of future earnings by taking the income of the appellant at Rs.10,000/- p.m. and granting future prospects @ 50%;
>
> (ii) Rs.7,50,000/- to be awarded towards repeated hospitalizations and medical expenses for undergoing 5 surgeries and medical treatment;
>
> (iii) Rs.10,00,000/- to be awarded towards future medical expenses and attendant charges;
>
> (iv) Interest @ 9% awarded by the High Court from the date of claim petition till the date of recovery to be maintained."

(3) The Supreme Court affirmed the ruling of this Court in appeal absolving the Insurance Company of liability to bear the brunt of compensation, as evidence was called for and produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks, who were at the time of the accident driving those vehicles without valid driving licenses. The Supreme Court noted that the owners and the drivers of the offending trucks had not appeared at any stage of the proceedings including before the Supreme Court. The operative part of the order of the Supreme Court in Para 7.2, while allowing the appeal, reads as follows:

> "7.2 We deem it just and fair to direct the respondent - Insurance Company to pay the enhanced amount of compensation as indicated in Para 6 above, to the appellant within a period of 12 weeks from the date of this judgment. The respondent – Insurance Company is directed to make out a Demand Draft in the name of the appellant, which can be used for his care for the rest of his life. The respondent – Insurance Company is entitled to recover the amount from the owners and drivers of the two offending trucks."

(4) Indisputably, the award has attained finality and compensation has been enhanced in the region of about Rs.50 lakhs of which Rs.10,43,000/- has been deposited before the Tribunal by the judgment debtor insurer contractually bound by the insurance policy and that amount has been disbursed to the injured claimant for present and future loss of a normal life, had the accident not occurred. This amount has to be deducted from the final calculations of the enhanced

compensation awarded by the Supreme Court and the balance is due and payable with interest.

(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?

(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 dated 15.10.2019, as follows:

> "After going through the settled law, this Tribunal is of 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.
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> 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 must go back to the learning curve back to law school. The High Court does no sit to cure stupidity and expects it 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.

(9) When I asked Mr. Mehta for the petitioner to disclose the citation of the judgments on which he depends [although cited before the Tribunal but not studied by it for their ratio in execution proceedings or are required, but the point being simple on first principles, are noticed but not dealt with], he has referred appropriately to an order of the Supreme Court delivered in Civil Appeal No.1095 of 2012 titled ***'A.V.Padma & others*** versus ***R. Venugopal & others'*** decided on 27.01.2012 as well as relying on the judgments of this Court rendered in ***Rameshwar Lal & others*** versus ***Union of India through General Manager, Northern Railway***[1] and ***Ankush Manro*** versus ***Rajinder Singh & others,*** [CR No.1287 of 2013 (O&M) decided on 26.02.2013] to claim relief of unconditional release of his money which belongs to him decree. These precedents are meant to convince the Tribunal that imposing conditions on release of compensation by a fixed period time causes hardship to the claimant/s, as the original owner of the moveable property [money], holding that there cannot be a judicial restraint on release of what has been granted to him by the

[1] 2011 (3) RCR (Civil) 518

Tribunal and confirmed until the Supreme Court. I have recorded this contention to recognize counsel's research on the subject, although it was not required for the decision.

(10) I do not subscribe to such active non-release of the adjudicated claim to the petitioner and see it as an act of abdicating duty cast on the Tribunal in execution proceedings when asked to satisfy the Supreme Court decree forthwith and without imposing any pre-condition or postponing the right compensation to an adjournment. The right to ownership of enhanced compensation passed to the petitioner, the moment Supreme Court pronounced final judgment.

(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 Insurance Company 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 forthwith even without receiving any further application or request by the petitioner by 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: [ref. asterisk 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 gains which the plaintiff would have made had he not been injured 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 copy of this order be sent to the Motor Accident Claim Tribunals across the territories this Court administers for their guidance.

Sumati Jund