

कार्यालय:- जिला एवं सेशन न्यायाधीश, अजमेर

क्रमांक/स्था0/2021/ 31576-31587 दिनांक:- 20/11/21

प्रतिलिपि निम्नांकित :-

1. न्यायाधीश, मोटर वाहन दुर्घटना दावा प्राधिकरण, अजमेर
2. अपर जिला एवं सेशन न्यायाधीश न.01/02/03 ब्यावर/ 01/02 किशनगढ़/न.01/02 केकड़ी/नसीराबाद को सूचनार्थ एवं पालनार्थ प्रेषित है। आदेश की प्रति माननीय राजस्थान उच्च न्यायालय की वेबसाईट hcraj.nic.in से डाउनलोड की जावे।
3. सिस्टम ऑफिसर जिला न्यायालय अजमेर को जिला न्यायालय अजमेर की वेबसाईट पर अपलोड करने हेतु।

जिला एवं सेशन न्यायाधीश
अजमेर 20-11-21

No.Gen/XIX/Misc/1476/2021/2480

Dated 15 / 11 / 2021

From : Registrar General
Rajasthan High Court
Jodhpur



To : All the District & Sessions Judges

Sub. : Circulation of order dated 13/8/2021 passed by Hon'ble Rajasthan High Court in S.B.Civil Writ Petition No.5612/2021, Shishir Sinha Vs. Cholamandlam M.S. General Insurance Company Limited & Ors. Alongwith S.B.Civil Writ Petition No. 8641/2021 with copy of order dated 4/9/2018 passed in S.B.Civil Writs No.15642/2018.

Sir,

While enclosing herewith a copy of dated 13/8/2021 passed by Hon'ble Rajasthan High Court in S.B.Civil Writ Petition No.5612/2021, Shishir Sinha Vs. Cholamandlam M.S. General Insurance Company Limited & Ors. alongwith S.B.Civil Writ Petition No. 8641/2021 with copy of order dated 4/9/2018 passed in S.B.Civil Writs No.15642/2018, Jilsad Alias Dilsad Vs. Shakuat and Others, I am under direction to request you to circulate the same amongst all the Motor Accident Claim Tribunals situated in your Judgeship your Judgeship for information and compliance of the direction as directed by Hon'ble Court in said order.

Yours sincerely,

Encl.: As above.


15-11-21
REGISTRAR (ADMN.)

Date 17/11/2021
Sr. Munshim/Sr. P.A./Estt./Acct./R.C./Steno


D J Ajmer

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No.5612/2021.

Shishir Sinha S/o Late Shri Rajendra Prasad Sinha, Aged About 51 Years, R/o A-3, F-105, Sdc, Deepak Marg, Adarsh Nagar, Jaipur (Rajasthan).

----Petitioner

Versus

1. Cholamandlam M.S. General Insurance Company Limited, Second Floor, Arg Building, Chitrangan Marg, C-Scheme, Jaipur Through Its Manager.
2. Kaluram Mali Son Of Shri Suraj Mal Mali, Resident Of House No. 19, Shyam Nagar Colony Jaysingh Pura, Laalwas, Jaipur (Rajasthan).
3. Kishen Kumar Bhargaw Son Of Shri H.I. Bhargaw, Resident Of House No. 33, Pancholiyaan Mohalla, Jamvaramgarh Road, Jamwa Ramgarh, Bisnaramgarh, Aandhi, Jaipur (Rajasthan).

----Respondents



S.B. Civil Writ Petition No.8641/2021

Rakesh Son Of Shri Kishor, Aged About 26 Years, Resident Of Village And Post Aaluda, Tehsil Sikrai, Police Station Nangal, District Dausa, At Present Resident Of Bhairu Colony, Jaisinghpura Khor, Delhi Bypass, Jaipur (Raj.)

----Petitioner

Versus

1. Banwari Lal Meena Son Of Shri Ramsahai, Aged About 49 Years, Resident Of Karodi, Tehsil Sikrai, District Dausa (Raj.) (Driver Vehicle No. Rj-14-CQ-92636)
2. Sanjay Agrawal Son Of Shri Kailash Chand Agrawal, Resident Of C-42, Grater Kailash Colony, Lal Kothi Scheme, Police Station Jyoti Nagar, Jaipur. (Owner Vehicle No. Rj-14-CQ-92636)
3. United India Insurance Company Limited, Through Its Manager, Regional Office, Sahara Chambers, Near Laxmimandi Tiraha, Tonk Road, Jaipur. (Insurance

42

Company Of Vehicle No. Rj-14-CQ-92636)

----Respondents

For Petitioner(s) : Mr. Najeeb Anwar Khan
Mr. Bhanu Prakash Verma
For Respondent(s) :

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**Order****13/08/2021**

Learned counsel for the petitioners had moved an application for releasing of the amount awarded to him and deposited under FDRs in a motor accident claim case. Learned counsel for the petitioners submits that the Ld. Judge has rejected the application without taking into consideration the law as settled by this court. Learned counsel relies on the judgment passed by this court in the case of Jilsad Alias Dilsad Versus Shaukat and Ors., SBCWP No.15642/2018 decided on 04.09.2018 wherein this court observed as under:-



"4. Taking into consideration the present scenario of the rate of interest as available in fixed deposits and that there are other sources of investment also available for getting better interest on the amount of compensation awarded, this Court is of the opinion that the guidelines laid down by the Apex Court are to be taken with the spirit of the change of method of investments as are now prevalent.

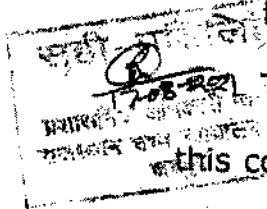
5. Taking note of the aforesaid judgment, this Court finds that the order rejecting the application has not been passed by the learned Tribunal judiciously. In the present circumstances where a compromise award has been passed, the learned Tribunal cannot be allowed to act in a rigid and mechanical manner. Appropriate order for proportionment of amount is required to be passed by the Tribunal and at least in cases of injuries where expenditures have to be incurred in continuous treatment, care and

attendance in relation to minors, 60% of the amount of compensation ought to be released in saving account of the claimant while 40% of the amount of compensation may be kept for future protection by way of depositing in fixed deposit accounts.

6. Thus, this Court finds that in cases where the individuals have entered into a compromise with the respondents either before the MACT or any Lok Adalat, a different yardstick is required to be adopted in relation to depositing of compensation amount in fixed deposits.

7. Accordingly, in relation to the cases of persons who have attained majority, this Court is of the opinion that the persons who have attained majority and who are literate and are able to take decision relating to their future, the Tribunal ought not insist on getting the amount deposited in fixed deposits and it should be left for the concerned claimant to take his own decision relating to the investment of the amount of compensation awarded in the manner which he may like to do. The Tribunal may, however, fix certain portion of the compensation awarded in fixed deposits upto the extent of 40% in relation to the claimants who are widows and children. This would be in tune with the judgment passed by the Apex Court in the case of General Manager, Kerala State Road Transport Corporation Trivandrum Vs. Susamma Thomas & Ors.: AIR 1994 SC 1631.

8. Consequently, the writ petition is partly allowed. The order impugned passed by the learned Tribunal is quashed and set aside and the learned Tribunal is directed to release 60% of the amount deposited in Fixed Deposits in favour of the petitioner along with interest as has been accrued till date. Rest of the amount shall remain deposited in Fixed Deposits. No costs."



This court finds that inspite of law having been settled by this court, the Ld. Judge, MACT are not complying with the orders and time and again are rejecting the applications moved before them for releasing of FDRs and writ petitions keep on piling up in this court.

In the hierarchy of judicial system, orders passed by the High Court are required to be implemented by the courts below

AN

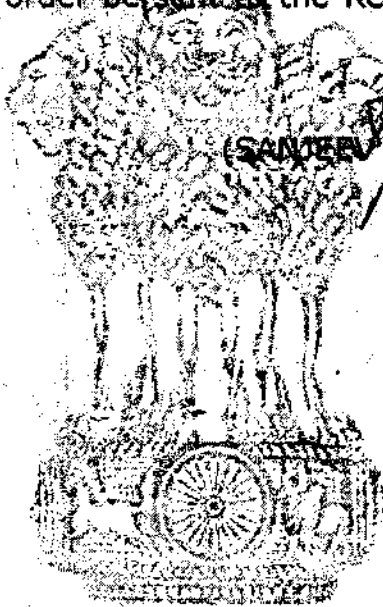
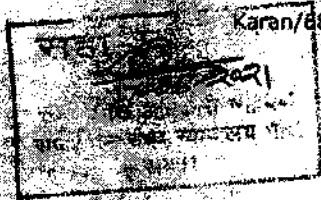
and no court below can refuse to comply with observations and directions issued by this court which have attained finality.

In view thereof, the present writ petitions are allowed. The orders passed in both the writ petitions by the Ld. Judge, MACT Jaipur Metro and Ld. Judge MACT Jaipur, District Jaipur are set aside with directions to release the FDRs of the petitioners who are fit to take decision relating to the amount which they want to invest in the manner as they deem fit.

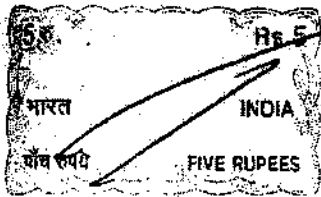
A copy of the order passed in the case of Jilsad Alias Dilsad (supra) be also circulated to the concerned Judge, MACTs so that future litigation may be avoided before this court.

A copy of this order be sent to the Registrar (Classification) for implementation.

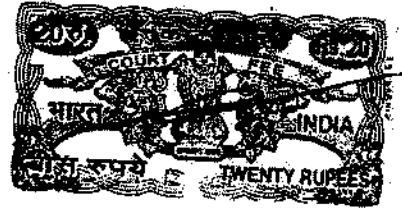
(SANJEEV PRAKASH SHARMA), J



सत्यमेव जयते



23/20
6/8/21



IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

BENCH AT JAIPUR.

S.B. CIVIL WRIT PETITION No. 5641/2021

Rakesh Son of Shri Kishor, aged about 26 years,
Resident of Village & Post Aaluda, Tehsil Sikrai,
Police Station Nangal, District Dausa, at present
resident of Bhairu Colony, Jaisingpura Khor, Delhi
bypass, Jaipur (Raj.)

Applicant/claimant/Petitioner

Versus

1. Banwari Lal Meena Son of Shri Ramsahai, aged
about 49 years, Resident of Karodi, Tehsil
Sikrai, District Dausa (Raj.)

(Driver vehicle No. RJ-14-CQ-92636)

2. Sanjay Agrawal Son of Shri Kailash Chand
Agrawal, Resident of C-42, Grater Kailash
Colony, Lal Kothi Scheme, Police Station Jyoti
Nagar, Jaipur.

(Owner vehicle No. RJ-14-CQ-92636)

United India Insurance Company Limited,
through its Manager, Regional Office, Sahara
Chambers, Near Laxmimandi Tiraha, Tonk Road,
Jaipur.

(Insurance company of vehicle No. RJ-14-CQ-
92636)

Non applicants-Respondents

GAUTAM RAJ JAIN
COURT REPORTER
RAJASTHAN HIGH COURT BENCH
JAIPUR



सहायक न्यायाधीश
प्रशासनिक सहायक न्यायाधीश
राजस्थान हाईकोर्ट
जायपुर

सहायक

S.B. CIVIL WRIT PETITION UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA.

AND

IN THE MATTER OF ORDER DATED 12.07.2021 PASSED BY
SHRI SATYANARAYAN VYAS, SPECIAL JUDGE, PRINTING
AND STATIONARY EMBEZZLEMENT CASES AND MOTOR
ACCIDENT CLAIMS TRIBUNAL JAIPUR DISTRICT JAIPUR IN
Case No. 491/2017 (OLD 799/2016) TITLED AS RAKESH
Vs. BANWARI LAL MEENA & ORS.) BY WHICH APPLICATION
FOR PRE MATURE PAYMENT OF AMOUNT WHICH WAS
DEPOSITED IN F.D.R. FILED BY THE PETITIONER HAS
BEEN REJECTED.



सही - प्रति
जयपुर



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writs No. 15642/2018

Jilsad Alias Dilsad S/o Shri Haqmuddin, Aged About 9 Years, By
Caste Mev, Resident Of Dundaval, Tehsil Nagar, District
Bharatpur Minor Through His Natural Guardian And Father Shri
Haqmuddin Son Of Shri Ismail

----Petitioner

Versus

Shaukat Son Of Shri Gaffar, By Caste Fakeer, Resident Of
Kalandar Colony, Nagar, Tehsil Nagar, District Bharatpur
(Raj.)

Tej Singh Son Of Shri Sua Lal, By Caste Jat, Resident Of
Kandeeka Tehsil Kathumar, District Alwar (Raj.)

The New India Assurance Company Limited, Divisional
Office, Purane Bijalkhanna Ke Pichhe, Alwar Through
Divisional Manager

----Respondents

For Petitioner(s)

Jai Singh Rathur, Adv.

HON'BLE MR. JUSTICE SANDEEP PRAKASH SHARMA

Judgment / Order

Reserved on 18/08/2018

Pronounced on 04/09/2018

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Reportable

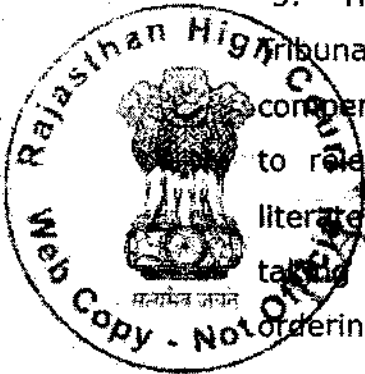
1. By way of this writ petition, the petitioner has prayed for premature release of amount of compensation lying in fixed deposit account and challenged the order dated 07/06/2018 passed by the learned Motor Accident Claims Tribunal and Additional District Judge No.1, Deeg, District Bharatpur in M.A.C. No.117/2016 by which application moved by the petitioner for



premature release of the amount of compensation lying in fixed deposit account has been rejected.

2. Learned counsel for the petitioner has relied on the judgment of the Apex Court rendered in the case of A.V. Padma & Ors. Vs. R. Venugopal & Ors.: MACD 2012 (SC) 25 wherein the Apex Court has held as under:-

"5. 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 a rigid and mechanical approach without appreciating the distinction drawn by the court in the case of minors, illiterate claimants, 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. These 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. 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 fund 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

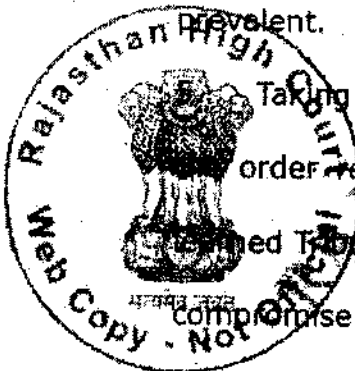


a routine manner, ignoring the object and the spirit of the guidelines issued by this Court and the genuine requirements of the claimants. Even in the case of literate persons, the Tribunals are automatically ordering investment of the amount of compensation in long term fixed deposit without recording 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. 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 violation 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. The attitude and approach on the part of the Tribunals is necessary in the interest of justice.

3. Case of the petitioner is that the petitioner is in dire need of money and therefore, he had entered into a compromise in National Lok Adalat to accept a lower sum of Rs.4,75,000/- in M.A.C. No.117/2016. However, the learned Tribunal has deposited the entire amount of compensation in fixed deposit account while the petitioner Jilsad alias Dilsad, who is 9 years old child of Haqmuiddin, is undergoing regular treatment for which money is required. He has to undergo heavy expenditures for operations but the amount has not been released.

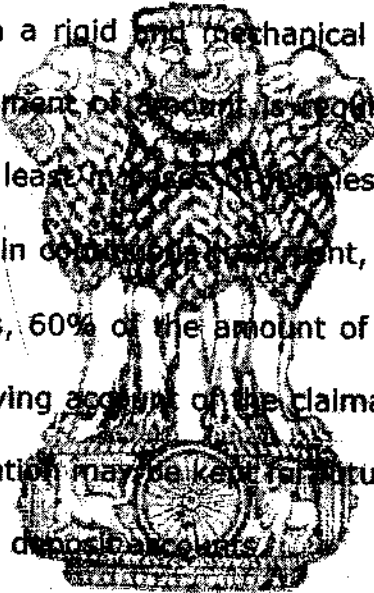


4. Taking into consideration the present scenario of the rate of interest as available in fixed deposits and that there are other sources of investment also available for getting better interest on the amount of compensation awarded, this Court is of the opinion that the guidelines laid down by the Apex Court are to be taken with the spirit of the change of method of investments as are now prevalent.



5. Taking note of the aforesaid judgment, this Court finds that order rejecting the application has not been passed by the learned Tribunal judiciously. In the present circumstances where a compromise award has been passed, the learned Tribunal cannot

be allowed to act in a rigid and mechanical manner. Appropriate order for proportionment of amount is required to be passed by the Tribunal and at least in cases where expenditures have to be incurred in education, maintenance, care and attendance in relation to minors, 60% of the amount of compensation ought to be released in saving account of the claimant while 40% of the amount of compensation may be kept for future protection by way of depositing in fixed deposits.



6. Thus, this Court finds that in cases where the individuals have entered into a compromise with the respondents either before the MACT or any Lok Adalat, a different yardstick is required to be adopted in relation to depositing of compensation amount in fixed deposits.

7. Accordingly, in relation to the cases of persons who have attained majority, this Court is of the opinion that the persons who have attained majority and who are literate and are able to take decision relating to their future, the Tribunal ought not insist on

getting the amount deposited in fixed deposits and it should be left for the concerned claimant to take his own decision relating to the investment of the amount of compensation awarded in the manner which he may like to do. The Tribunal may, however, fix certain portion of the compensation awarded in fixed deposits up to the extent of 40% in relation to the claimants who are widows and children. This would be in tune with the judgment passed by

the Apex Court in the case of **General Manager, Kerala State Road Transport Corporation Trivandrum Vs. Susamma Thomas & Ors.: AIR 1994 SC 1631.**

Consequently, the writ petition is partly allowed. The order impugned passed by the learned Tribunal is quashed and set aside and the learned Tribunal is directed to deposit 60% of the amount deposited in Fixed Deposits in favour of the petitioner alongwith interest as has been accrued. The rest of the amount shall remain deposited in Fixed Deposits. No costs.

(S. PRAKASH SHARMA), J

Raghu/

सत्यमेव जयते