

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1749 OF 2011
WITH
CIVIL APPLICATION NO.4741 OF 2010
AND
CIVIL APPLICATION NO.1443 OF 2014
IN
FIRST APPEAL NO.1749 OF 2011**

Mahadeo Ganpat Barate,
since deceased through legal heirs:

1a] Shri Pravin Mahadev Barate,
since deceased through legal heirs:

1(a)(i) Smt. Kavita Pravin Barate
& Ors.

...Appellants

Versus

Prakash Balasaheb Pisal
since deceased through legal heirs:

1(1) Balasaheb Bhausahab Pisal &
Ors.

...Respondents

**WITH
FIRST APPEAL NO.2267 OF 2007**

Prakash Balasaheb Pisal
since deceased through legal heirs:

1(1) Balasaheb Bhausahab Pisal &
Ors.

...Appellants

Versus

Manik Mahadev Waghmare & Ors.

...Respondents

+.....

Mr. A.V. Anturkar, Senior Advocate i/b. Mr. S.B. Deshmukh for Appellants/Applicants in F.A. No.1749 of 2011, C.A.F. No.4741 of 2010 and C.A.F. No.1443 of 2014 Mr. D.D. Shinde for Respondent Nos.1-[1] to 1-[5] in F.A. No.1749 of 2011 and for Applicants in F.A. No.2267 of 2007.

Mr. D.S. Joshi for Respondent No.2 in F.A. No.1749 of 2011.

Mr. Vilas Tapkir for Respondent Nos.1, 2A to 2D in F.A. No.2267 of 2007.

Mr. Indrajeet R. Kulkarni for Respondent No.3 in F.A. No.2267 of 2007.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 26th AUGUST, 2015.

P. C. :

In these two appeals, the judgment and award dated 22.1.2007 passed by the learned Additional Member, Motor Accident Claims Tribunal, Pune, in Claim Application No.143 of 1997 is challenged.

2. First Appeal No. 2267 of 2007 is filed by the Original Applicant who filed the injury claim against the Appellants in other appeal and the insurance company, which is excluded from the liability of this impugned judgment. In the said appeal, the original

Applicant has prayed for enhancement of the compensation. The injury claim was made for Rs.30,00,000/- and the learned Member of the Tribunal gave compensation of Rs.10,27,450/- with interest @ 7.5 % p.a. from the registration of the application. The Applicants therefore, filed the appeal for enhancement of the amount of compensation from Rs.10,27,450/- to Rs.30,00,000/-.

3. The other appeal i.e. First Appeal No.1749 of 2011 is filed by the owners of the vehicle. After filing the appeal, one of the Appellants died and, therefore, the legal representatives were brought on record. In First Appeal No.1749 of 2011 the impugned judgment and award dated 22.1.2007 is challenged and it is prayed that the said award be set aside.

4. The Applicants in Civil Application No.1443 of 2014 have prayed for recording additional evidence under Order 41 Rule 27 of the Civil Procedure Code, 1908.

5. At the time of hearing of these two First Appeals, Mr. Vyankatesh Barate, son of the vehicle owner is present in the Court and on his instructions learned senior counsel for the Applicants in First Appeal No.1749 of 2011 submitted that he prays for remand of this appeal before the trial Court. He will explained some factual developments before the trial Court and the application be placed before the trial Court. Earlier injury claim was made for compensation of Rs.2,00,000/-. Notice was served on the Respondent /owner of the vehicle alongwith the insurance company. The owner of the vehicle appeared in the claim before the Tribunal. However, the owner of the vehicle did not engage counsel and personally appeared before the Tribunal. During the course of hearing of the matter one application was moved by the claimant for amendment of the claim application by which he wanted to increase his amount of compensation claim from Rs.2,00,000/- to Rs.30,00,000/-. Learned senior counsel appearing for the Appellants submit that said application for amendment was not served on the Respondents/owner of the vehicle. He was not aware of what prayer was made by the Appellants. The

Respondents did not file reply to the original application and so also did not file reply to the application for amendment for enhancement of the amount of compensation. The matter thereafter was decided and the Tribunal was pleased to grant compensation of Rs.10,27,450/- to the claimants. The Insurance company-Respondent No.2 in F.A. No.1149 of 2011 and Respondent No.3 in F.A. No.2267 of 2007 was exonerated from the liability on the ground that the policy was not valid. Learned senior counsel further submitted that the Respondents did not get proper opportunity to defend the original and amended claim and this matter may be remanded and in the interest of justice the parties be allowed to file their respective replies and so also necessary amendment and lead evidence to that effect.

6. The learned counsel further submitted that F. A. No.2267 of 2007, which is admitted, is filed for enhancement of the compensation and the said appeal may come up for final hearing, may be after few years. He submitted that at that time also, the Respondents, who are Appellants in the other appeal, will press for

remand as they could not get opportunity to deal with the issue of increased amount of the compensation. Learned senior counsel has submitted that the owner of the vehicle has deposited the entire amount of the award alongwith the interest accrued thereon in the Tribunal, which was Rs. 21,03,700 in the year 2011. Learned counsel for the original claimant submitted that the claimant /legal representatives of the claimant be allowed to withdraw the said amount.

7. The learned counsel for the claimant submitted that the injured is no more and he died due to the repercussions of the accident. If the matter is remanded, the claimants should also be allowed to move the application to convert the injury claim into death claim. It is further submitted that they also be allowed to file necessary rejoinder, if required. Respondents have withdrawn Rs.2,00,000/- till today. Learned counsel for the Respondents submit that the Respondents are poor and old and were completely dependent on the deceased and, therefore, they be allowed to withdraw the said decretal amount, which is deposited by the

Appellants /owners of the vehicle in the Tribunal

8. The insurance company opposes the application and prayer of remand as the insurance company is exonerated by the said judgment and order dated 22.1.2007.

9. On perusing the record, it appears that the application for enhancement of the compensation amount from Rs.2,00,000/- to Rs.30,00,000/-was made. Perused the record and proceedings of the application for amendment of the claim. Application in respect of the claim amount is marked as Exh.44. Said application shows endorsement as “other side to say” on 15.2.2005. Below that there is one endorsement of “copy received”. However, learned counsel for the Appellant-owner of the vehicle submits that the name of the owner of the vehicle is Mahadev Barate and this is not the signature of Mahadev Barate and nobody has made it on his behalf.

10. Learned counsel for the claimants submits that the insurance company has filed reply to this application. However, the

owner of the vehicle did not file reply. Considering this, it appears that the Respondent /owner of the vehicle may not be aware of this enhancement from Rs.2,00,000/- to Rs.30,00,000/- as he appeared as party -in-person as it was his choice to appear in person and not to engage an Advocate for any reason.

11. In my view, the claim amount of Rs.2,00,000/- was increased to Rs.3,00,000/- and amount was passed of Rs.10,27,450/- with interest and the owner had to pay Rs.21,03,700/- in the Court towards compensation; therefore, he should be given one opportunity to put up his defence. However, at the same time, the heirs of the original claimant are allowed to withdraw some portion of the decretal amount, which is deposited in the Court. All the parties are to be given opportunity to put up their respective claims and defences. Hence, the following order is passed :

ORDER

(a) Learned counsel for the original Applicant, who is Appellant in First Appeal No.2267 of 2007, has no

objection if the said admitted appeal and First Appeal No.1749 of 2011 are remanded for fresh hearing. In both the appeals the same order is challenged and since evidence in both the appeals is interlinked, it will be just and proper to remand both the appeals to the Tribunal.

(b) The judgment and award passed on 22.1.2007 is hereby set aside.

(c) Both the appeals are remanded to the Motor Accident Claims Tribunal, Pune. The Respondent /owner of the vehicle is allowed to file written statement, so also original Applicant is allowed to file any application, if he wants to file, for conversion of the injury claim into death claim. All the Respondents including the insurance company are allowed to file reply to such claim.

(d) Evidence recorded earlier is to be read as part of the record of the application as the injured had tendered the evidence and now he is no more. The

Tribunal to allow all the parties to lead further evidence, documentary as well as oral.

(e) The Applicant in F.A. No. 2267 of 2007 / legal representatives of the original Applicant are allowed to withdraw Rs.8,00,000/- on undertaking to be given before the Tribunal and the remaining amount shall be invested in a nationalised bank.

(f) These two appeals alongwith both the applications are hereby disposed of.

(g) Learned Tribunal shall make endeavour to complete the evidence and decide the claim application before 29.2.2016. It shall decide the matter afresh on merits considering the evidence.

(h) Parties to appear before the Motor Accident Claims Tribunal, Pune, on **11.9.2015**.

(i) Registry to send back the record and proceedings immediately.

(MRS. MRIDULA BHATKAR, J.)