

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

WRIT PETITION NO.8169 OF 2013

Dattatraya Laxman Kakad

..Petitioner

V/s.

Rukmini Pandurang Mahale & Ors.

.. Respondents

Mr.Sandip Dilip Shinde for the Petitioner.

Mr.Milind M. Sathye for the Respondent No.5.

CORAM : M.S. SONAK, J.

DATE : 18th APRIL, 2016.

P.C.

1. Heard learned counsel for the parties.

2. The respondent nos.1 to 3 and the deleted respondent no.4 had instituted the Claim Petition No.440 of 2008 before the Motor Accident Claim Tribunal at Nashik on 07-07-2008 on account of death of Pandurang Shanker Mahale an employee of the Irrigation Department. The respondent No.1 is the wife of the deceased Pandurang Mahale and respondent Nos.2 and 3 are his children. The deleted respondent no.4 was the mother of deceased Pandurang Mahale.

3. In the Claim Petition, it is the case of the claimants that the accident in which late Pandurang Shanker Mahale died, involved vehicle No.MH-15-BD-255.

4. The petitioner herein, was impleaded as respondent in the Claim Petition. The petitioner on 30-10-2010, filed a reply/written statement, in which, he took the defense that the vehicle was being driven by his driver but the said driver was not at fault.

5. After period of one year i.e. on 11-11-2011, the petitioner, applied for leave to amend the written statement. The proposed amendment indicated that the said vehicle had already been sold by the petitioner to one Rajesh Jagdish Thakkar and the said Rajesh Jagdish Thakkar thereafter sold the vehicle to Sunil Jadhav who had even obtained the loan by hypotheticating the vehicle. The MACT, by the impugned order dated 13th March 2013 has rejected the amendment application.

6. The learned counsel for the petitioner has contended that the true and correct facts remained to be stated in the original reply/written statement as filed on account of some communication gap between the petitioner and his advocate. This is not a case where the petitioner is setting up some inconsistent case. In any case, learned counsel for the petitioner submitted that there is no bar to setting up inconsistent case, particularly when it comes to defense. For all these reasons learned counsel for the petitioner submitted that the impugned order is without jurisdiction and therefore, the same may be set aside.

7. Having heard learned counsel for the parties and upon perusing the record, in my judgment, there is no case made out to interfere with the impugned order. The petitioner, was impleaded as a respondent in the claim petition in his capacity as the vehicle owner. After the period of almost 2 years since the date the Claim Petition was lodged, petitioner, on 30-10-2010, filed a written statement in which, no defense was raised that the petitioner is not the owner of the vehicle.

Rather, the defense raised was that the petitioner's driver was indeed driving the vehicle but such driver was not negligent and therefore, he was not at fault. After the period of over one year the petitioner has applied for leave to amend the written statement to take up a plea that the vehicle has already been sold and therefore, the petitioner is not at all liable. This, to a certain extent amounts to withdrawal of admissions made. The delay in applying for leave to amend has not been explained. The theory of communication gap, hardly inspires any confidence. The petitioner, cannot be permitted to take any advantage of his negligence in the matter.

8. Record indicates that the petitioner has already succeeded in stalling the progress of a Claim Petition which was instituted on 07-07-2008 for the last eight years. The petitioner has obtained ad-interim relief staying further proceedings in the Claim Petition and the same is operational from 11th November 2013.

9. The record indicates that the petitioner, after

obtaining the ad-interim relief, has not taken any serious steps in the matter of service of notices upon the respondents-claimants. Ultimately, the deceased Pandurang Mahale's aged mother who has been impleaded as respondent no.4 has also expired. The petition was directed to stand dismissed as against the said respondent on 12-08-2014. Thus, on account of the negligence on the part of the petitioner in taking proper steps, Sonibai, the mother of deceased Pandurang Mahale was deprived of opportunity of seeking any compensation on account of the death of her son due to her in her old age. Similarly, even till today, respondent nos.1 to 3-claimants have not yet been served. Jurisdiction under the Articles 226 and 227 which is essentially equitable in nature, cannot be made use of to frustrate legitimate claims of claimants seeking compensation from the Motor Accident Claims Tribunal. This is precisely what the petitioner has achieved by way of institution of the present proceedings.

10. Considering the aforesaid circumstances there is no case made out to interfere with the impugned order. The

petition is accordingly dismissed with costs which are assessed at Rs.25,000/-. The MACT to ensure that cost are paid by the petitioner to the claimants in MACP No.440 of 2008. The petitioner is at liberty to deposit the amount of cost before the MACT and the MACT may thereafter permits the claimants to withdraw the same unconditionally.

11. This petition is dismissed. The interim order is vacated.

12. The MACT is directed to issue fresh notice to the claimants in MACP No.440 of 2008 and to proceed to dispose of the said Claim Petition as expeditiously as possible and in any case within a period of six months from the date of production of authenticated copy of this order.

13. Parties are directed to produce authenticated copy of this order before the MACT.

14. The petitioners and respondent No.5 to appear

before MACT on 07th June 2016 at 11.00 a.m.

15. All concerned to act on authenticated copy of this order.

16. Registry is also directed to issue necessary intimation to the MACT at Nasik taking up MACP No.440 of 2008 enclosing therewith the authenticated copy of this order. Registry to do the needful within a period of two weeks from today.

(M.S. SONAK, J.)