

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

920 FIRST APPEAL NO. 2150 OF 2017

ARYAN BHIMSING CHOUHAN (MINOR) U/G OF
GRAND MOTHER KAUSHLAYABAI RAMBHAU SONWANE
VERSUS
ANIL KESHAV JANWALE AND ANOTHER

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Advocate for Appellants : Mr. Gaikwad Amol R.

Advocate for Respondent No.1 : Mr. Suvidh S. Kulkarni.

...

CORAM : **V. K. JADHAV, J.**

DATE : 01st August, 2017.

ORDER:

. Being aggrieved by the order dated 30th March, 2017 passed by the Chairman of the Motor Accident Claims Tribunal, Beed below Exhibit 1 in MACP No.53 of 2015, original Claimant No.2 has preferred the present appeal.

2 The learned counsel for Appellant / original Claimant submits that the Tribunal has granted exemption to the Claimant to deposit 50% of the Court fees vide order dated 13th February, 2015, till the disposal of the application filed by the Claimant under Section 140 of the Motor Vehicles Act. Though the said application was disposed on 23rd November, 2016 and the compensation amount under no fault liability has been deposited by the other side, the Appellant / Claimant

has not withdrawn the said amount on account of the sad demise of his father during the pendency of the said claim petition. However, the Tribunal has dismissed the claim petition on the ground that the Claimant has not deposited the Court fees.

3 The learned counsel for Respondent No.1 / owner submits that exemption was granted till the disposal of the application filed by the Claimant under Section 140 of the Motor Vehicles Act and since the said application was disposed of on 23rd November, of 2016, it was incumbent upon the Appellant / Claimant to deposit the entire Court fees, failing therein the Tribunal has rightly rejected the claim petition under the provisions of Order VII, Rule 11 of the Code of Civil Procedure. There is no substance in the appeal.

4 On perusal of the title clause of Motor Accident Claim Petition No.53 of 2015, it appears that during the pendency of the said claim petition, original Claimant No.1, who happened to be the father of present Appellant, who is minor, died and as such, the grand mother of the Appellant / Claimant was taken on record as a guardian. Even the learned counsel, on instructions, made a statement that till this date, the Appellant / Claimant has not withdrawn the said amount of compensation deposited by the other side in response to the no fault

liability award passed by the Tribunal. The said exemption was granted on the ground that the Appellant / Claimant is not able to pay the Court fees and only after depositing the no fault liability amount before the Tribunal, he would be able to pay the Court fees. However, it appears that during the pendency of the said claim petition, the natural father of Appellant / Claimant died and the Appellant, who is a minor, could not pay the Court fees though the exemption was granted. It further appears from the statement made on behalf of the Appellant / Claimant that said amount under no fault liability award is still lying before the Tribunal. In such circumstances, the impugned order cannot sustain and the same is thus, liable to be quashed and set aside. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed. No costs.
- II. The order dated 30th March, 2017 passed by the Chairman of the Motor Accident Claims Tribunal, Beed below Exhibit 1 in MACP No.53 of 2015, is hereby quashed and set aside with the following directions to the Tribunal:

- a) Restore Motor Accident Claim Petition No.53 of 2015 to its original number and dispose it of in accordance with law.
- b) The parties shall appear before the Tribunal on 1st September, 2017.
- c) The Appellant / Claimant shall pay the Court fees within two weeks after withdrawal of amount deposited under no fault liability.

III. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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