Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1789 OF 2017
IN
FIRST APPEAL NO. 32 OF 2017

Suman Dattatraya Binnar ...Applicant

Versus

United India Insurance Co Ltd ...Respondent

Mr VS Tadke, *i/b DD Shinde, for the Applicant.*
Mr KN Kandekar, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 29th June 2017

PC:-

1. The Motor Accident Claims Tribunal, Pune, by its judgment dated 24th January, 2011 awarded compensation to the Claimants of Rs.21,58,528/- and interest at 7% p.a. in this fatal accident case. It also allowed Rs.2,00,000/- to be paid to Applicant No.1, a further Rs.2,00,000/- to Applicant No.2 and Rs.1,00,000/- each to Opponents Nos.4 and 5. The remaining amount of Rs.5,00,000/- was to be invested in the name of Applicant No.3, a minor then six months old, till he attained majority. The remainder was invested in the name of the 1st Applicant with a nationalised Bank and the Applicant was to receive monthly interest.

2. The accident took place on 14th February 1998. Dattatraya Khandu Binnar, at the time a Lecturer with the Anantrao Thopte College, Bhor and himself a M.Phil student, was on his motorcycle travelling from his residence towards Swargate ST Depot in Pune. At the accident spot, a luxury bus, then travelling from Aundh to Shivaji Nagar, is said to have made an abrupt left turn. Dattatraya was on his motorcycle to the left of the luxury bus. The Claim says the bus turned without any indication. Dattatrya was thrown off the motorcycle. He was severely injured. He was admitted to Hardikar Hospital but succumbed to his injuries immediately. The Applicant No.1 was his widow, 28 years old at that time. Applicant No.2 was their six years old daughter. Applicant No.3 was their minor son then 6 months old. Opponent No.1 was the driver of the bus. Opponent No.2 was bus owner. Opponent No.3 was the insurer. Opponents Nos.4 and 5 were Dattatraya's parents.

3. The entire amount with accrued interest is in deposit with the Motor Accident Claims Tribunal. The Appeal was admitted on 24th October 2016.

4. The present Application No.1789 of 2017 is filed on the basis that the original Applicant No.2 Poonam, who is now 24 years old, is very shortly to be married; in fact just a few days now on 3rd July 2017. The Applicant therefore seeks leave to withdraw the entire amount deposited. This is Rs.30,14,304/-.

5. The reason that I have set out, though in brief, the facts of the case is for an understanding of the issues involved and the point taken in Appeal. The principal ground raised is that Dattatraya was himself negligent and was attempting to overtake the bus on its left. The Trial Court found that there was no evidence of this. It based its conclusion on an assessment of the width of the road, the likely width of the bus and then concluded that there was not sufficient space for Dattatraya to attempt any such overtaking manoeuvre. The driver of the bus does not seen to have been examined by the Insurance Company or the owner before the Trial Court. He was undoubtedly the person best placed to support such a defence.

6. It is having regard to these circumstances that I am inclined to make an order permitting a withdrawal of more than 50% of the amount deposited. I will permit a withdrawal of 75% of the amount deposited with proportionate interest accrued thereon. The MACT, Pune will permit the withdrawal on a priority basis and will act on presentation of an authenticated copy of this order. The amount will be permitted to be withdrawn without furnishing security or an undertaking.

7. The Civil Application is disposed of in these terms. No costs.

(G. S. PATEL, J.)