

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 5459 OF 2007
IN
FIRST APPEAL (STAMP) NO. 24706 OF 2007
WITH
CIVIL APPLICATION NO. 5460 OF 2007
IN
FIRST APPEAL (STAMP) NO. 24706 OF 2007

The Manager,
New India Assurance Co. Ltd. .. Applicant /Appellant
vs.
Ramesh Hari Khedekar & Ors. .. Respondents

Mr. I. R. Kulkarni for Applicant / Appellant.
Mr. V. S. Talkute for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 17 JANUARY 2017

P.C :

- 1] Heard learned counsel for the parties.
- 2] Civil application no. 5459 of 2007 seeks condonation of delay of 91 days in instituting the appeal against award dated 17 January 2007 made by MACT, Alibag.
- 3] The civil application and consequently the appeal stands dismissed against respondent nos. 2 and 3 i.e. driver and owner of the vehicle involved in the motor accident. However, Mr. Kulkarni, learned counsel for the appellant submits that the appeal can proceed as against the respondent no. 1, who was the claimant

before the MACT. Without going into the issue as to whether the appeal is maintainable only as against the claimant, the application seeking condonation of delay is taken up for consideration.

4] The delay of 91 days in instituting the appeal is sufficiently explained, particularly in paragraph 2 of the civil application. Therefore, taking into consideration the quantum of delay and the explanation, the civil application is allowed and the delay in institution of the appeal is condoned.

5] At the request of and with the consent of learned counsel for the parties, the appeal is taken up for final disposal forthwith. This is because Mr. Kulkarni, learned counsel for the appellant submitted that he has only following two submissions to make in support of the appeal :

(A) Since there was a head on collusion between MSRTC bus and the truck insured by the appellant, MACT ought to have held that both the vehicles were negligent and contributed equally;

(B) That there was no material on record to hold that claimant was earning Rs.5,000/- per month and in any case, the multiplier applied by the MACT was on the higher side.

6] On the aspect of contributory negligence, it must be noted that MACT upon appreciation of the material on record has held that the

claimant i.e. driver of the S.T. bus was responsible for the accident to the extent of 25%. Learned counsel for the appellant was unable to point out any deficiency in the record of this finding of fact. In fact, the record indicates that one of the passengers in the S.T. bus i.e. Vaishali Kadam and four others had instituted claim petition no. 774 of 1998 against the MSRTC as well as the appellant, respondent nos. 2 and 3. In the award dated 10 June 2006 made in the said case, the MACT had determined that the driver of the S.T. bus i.e. respondent no. 1 herein was responsible for the accident to the extent of 25% and the truck driver was responsible for the accident to the extent of 75%. There is nothing on record to indicate that the appellant / insurance company had questioned the award dated 10 June 2006 or in any case that such challenge was successful. Taking into consideration this aspect, there is no case made out to interfere with the finding on contributory negligence. There is accordingly no merit in the first submission of Mr. Kulkarni.

7] In so far as the second submission is concerned, the claimant was an employee of MSRTC. He had produced salary certificate of record as well as the income tax returns. As if this was not sufficient, representative of the employer was also examined, who has corroborated this aspect. In such circumstances, it cannot be said that the finding that the income of the claimant was Rs.5,000/- per month was not supported by any material on record. The MACT has

taken into consideration the age of the claimant, the nature of injury / disability suffered by him and applied the correct principles in determining compensation. In fact, the compensation has been determined and conservatively and from out of the same, there is deduction to the extent of 25% on account of contributory negligence. There is accordingly no merit in the second submission of Mr. Kulkarni.

8] In this case, the awarded amount is Rs.58,500/- with interest at the rate of 7% per annum from the date of registration of the petition i.e. 16 June 1998 till full realization of the amount. The appellant obtained ad interim relief sometime in the year 2007. Thereafter for last 9 years the matter could not be taken up because the appellant took no proper steps to serve respondent nos. 2 and 3. The appeal stood dismissed against the said respondents on account of conditional orders made. Thereafter, matter was adjourned from time to time to enable the appellant to restore the application / appeal as against respondent nos. 2 and 3. However, even this was not done. As a result, from 2007 onwards, the respondent no.1 was deprived of compensation due and payable to him. For these reasons, whilst dismissing the appeal, costs of Rs.10,000/- (Rupees Ten Thousand) are imposed upon the appellant.

9] There is no clarity as to whether the awarded amount has been deposited in this court or before the MACT at Alibag. Wherever the amounts are deposited, the respondent no. 1 shall be entitled to withdraw the same together with accrued interest in satisfaction of the impugned award. In case, any additional amount is required to be paid by the appellant, the executing court is at liberty to make appropriate orders, in order to ensure that the award is duly satisfied. However, if the amount deposited, exceeds the awarded amount and costs now awarded, the appellant shall be at liberty to withdraw the same from the executing court i.e. MACT.

10] If at all any amount is deposited in this court, the Registry shall transfer the same to the MACT Raigad within a period of four weeks from today. This direction is issued at the request of Mr. Talkute, learned counsel for respondent no. 1.

11] The Appeal is dismissed with costs quantified at Rs.10,000/- (Rupees Ten Thousand). Consequently, civil application no. 5460 of 2007 for stay does not survive and is dismissed.

12] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)