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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1941 OF 2017
IN
FIRST APPEAL ST NO. 28444 OF 2016

Arvind Ganpati Patil & Anr	...Applicants
<i>Versus</i>	
Surekha Mahadev Kamble & Ors	...Respondents

Mr Yuvraj Narvankar, for the Applicants.

CORAM: G.S. PATEL, J
DATED: 19th July 2017

PC:-

1. This is a civil application by the applicants seeking exemption from depositing the amount awarded by the MACT Kolhapur and for a stay on execution of that award.

2. The circumstances are somewhat peculiar. The 1st respondent to the appeal is the deceased's widow. Respondents nos. 2 and 3 are her sons, both adults. There is no insurer involved in this matter.

3. The appellants are respectively the owner and driver of a Hero Honda motorcycle MH-09-AT-7799. The claim was that on

1st November 2009 at about 9.20 p.m. — the time is of some significance — the deceased Mahadeo Sharnappa Kamble was on his bicycle going from Ichalkaranji towards Sahakar Nagar. He reached Yadrav Phata on Shahapur Road when the appellants' motorcycle allegedly collided into his bicycle. Mahadeo fell on the road. He sustained fatal injuries and died on the spot. This was the case of the original claimants.

4. The owner, original opponent No. 2, contested the proceedings. He said that the motorcycle was not being driven in rash and negligent fashion at all. It was Mahadeo who was intoxicated. He could not control his bicycle. He abruptly and without warning turned to the right. When the motorcyclists honked, Mahadeo got confused, and lost control of his bicycle. That explains his fall.

5. The appellants argued that Mahadeo's state of intoxication is borne out from the inquest panchanama and the post-mortem report. The post-mortem report was Exhibit 43 in evidence. There is *prima facie* some unexplained indication of alcohol in the stomach and the contents. The inquest panchanama is more emphatic at Exhibit 42.

6. But this is not the principal reason to seek exemption and stay. The appellants point out that they are agriculturists who have a substantial loan to repay. Their agricultural yields are poor. The loan was taken for water supply system but that system has not succeeded. The 1st applicant's daughter is dyslexic and has certain

other conditions that require regular treatment in Kolhapur and attendant expenses. His wife has undergone an abdominal surgery in June 2016 and his mother is paralytic. His father too has health issues. In addition, there are THE expenses of eight year old daughter and three year old son. The 2nd applicant also has a minor daughter.

7. I have set out the background in the appeal only because I propose to grant exemption but subject to a condition. I called for additional evidence from the appellants and this is now on Affidavit. The affidavit is filed by the 1st applicant. It is dated 1st July 2017 and it has accompanying documents. It has been served on the respondents. Despite service the respondents are absent.

8. In view thereof, there will be an order in terms of prayer clauses (a) and (b) of the civil application, which read as follows:

“(a) The Appellants therefore pray that pending the hearing and final disposal of this appeal, the execution, effect and implementation of the judgment and award dated 31st August 2016 passed by learned Member of Motor Accident Claims Tribunal at Kolhapur, Mr KR Joglekar in Motor Accident Claims Application No. 124 of 2010 be stayed;

(b) That pending the hearing and final disposal of this Appeal, this Hon’ble Court be pleased to restrain the Respondents, their servants, agents and persons claiming through them from taking any action under the said Judgment and Award dated 31st August 2016

passed by learned Member of Motor Accident Claims Tribunal at Kolhapur, Mr KR Joglekar in Motor Accident Claims Application No. 124 of 2010."

9. This is however subject to the both appellants filing separate undertakings that in the event that the appeal is dismissed, they will deposit the amount due with all accrued interest within a period of not more than twelve weeks from the date of that order. The appellants will also be at liberty at any time to make that deposit either in whole or in part before the MACT Kolhapur in order to save interest from continuing to run.

10. Liberty also to the respondents to apply for a variation, modification or recall of this order with at least four weeks' prior notice to the advocates for the appellants.

11. The civil application is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)