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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2297 OF 2018
IN
FIRST APPEAL STAMP 4470 OF 2017

Sandip Bhausaheb Adsule APPLICANT

VERSUS

The Manager, Mahindra and Mahindra
Financial Services Ltd and and Others RESPONDENTS

....

Mrs. Pooja V. Langhe, Advocate for the applicant
Mr. S. S. Gangakhedkar, Advocate for respondent No.1

....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 10th APRIL, 2018

ORDER :

1. Heard learned advocates for the parties.

2. This is an application for withdrawal of amount deposited in this court by respondent No.1 herein.

3. The applicant was injured in the accident that had taken place on 9th January, 2006. He had been travelling in a rickshaw bearing registration No. MH-17 / K-2544. The rickshaw had collided on a Tata tempo vehicle bearing registration No. MH-20 /

A-5493. A crime had been registered with Veergaon police station bearing No. 3 of 2006.

4. Applicant had been after accident immediately shifted to Rural Hospital at Vaijapur and from there he was shifted for further treatment to a private Hospital at Shrirampur. He had been bed ridden for over seven months.

5. Applicant had been serving in an engineering concern as a fitter earning about Rs.6,000/- per month. Medical treatment had been expensive and the claimant had to spend a sum of about Rs.2,00,000/- to recover from injuries and in the process, he also suffered permanent disability and he had to lose service.

6. Applicant had approached Motor Accident Claims Tribunal at Shrirampur. Applicant had claimed compensation to the tune of Rs.3,00,000/-. Respondent No.1 herein was respondent No. 2 in MACP No. 219 of 2006 before Motor Accident Claims Tribunal at Shrirampur. Present respondents No. 2 to 4 were respondents No. 1, 3 and 4 respectively in the same. Though said respondents No. 2 and 3 therein, present respondents No. 1 and 3 respectively were duly served in the claim petition, however, had not appeared and the matter proceeded *ex parte* against them.

7. The Motor Accident Claims Tribunal had granted claim to the extent of Rs.5,37,581/- inclusive of No Fault Liability amount of Rs.25,000/- with interest thereon @ 9% p.a. from the date of the petition. Respondents No.1 and 2 herein were held liable to pay 50% of the compensation amount whereas respondents No.3 and 4 herein were held liable to pay rest of the 50% amount of compensation.

8. Claimant had initiated execution proceedings and thereafter present appeal has been filed after a delay of almost two years by respondent No. 1 herein. Along with delay condonation application in the first appeal, an application seeking stay to the execution proceedings had also been filed and this court had stayed execution proceedings subject to deposit of entire amount under the award.

9. However, civil application for withdrawal by the applicant depicts that only partial amount has been deposited and not the entire award amount as directed by this court while granting stay to the execution and operation of the impugned award.

10. According to learned advocate for respondent No.1 – appellant, has been deposited as per apportionment that would

accrue, since owner and the appellant (respondent No. 1 herein) are held liable to pay 50% of the compensation.

11. Present application, as such, has been moved by the claimant for withdrawal of the amount deposited by respondent No. 1.

12. Learned advocate for the applicant – claimant submits that the accident took place in 2006. Thereafter, claim petition had been preferred before the Motor Accident Claims Tribunal at Shrirampur. The same had been decided. During pendency of the claim petition, the claimant had received Rs.25,000/- towards no fault liability. Except said amount the claimant has not received any further amount.

13. Respondent No. 1 had opted not to appear in the claim petition and the petition had proceeded with and had been decided, whereunder owner of the vehicle and respondent No. 1 have been held liable to bear 50% of the compensation awarded and rest of the 50% is to be borne by respondents No.3 and 4 in the claim petition concerned with other vehicle.

14. Learned advocate submits that due to the accident the applicant has suffered serious injuries. In the first place, he has

suffered bodily injuries and had to be bed ridden for about seven months and had to incur huge expenditure over medical treatment. Secondly, his absence from work with the employer has cost him his job. In the process, along with him, all the family members have also suffered financially and otherwise.

15. Learned advocate for the applicant goes on to submit that conduct of respondent No. 1 during proceedings of the claim petition, as can be gathered had been callous and indifferent, rather to an extent had been irresponsible, showing no deference to the court proceedings. Over and above that, while the court proceedings were allowed to be proceeded with *ex parte* and even after the decision by the Tribunal, appeal has been preferred belatedly. It is now being sought to be claimed that respondent No. 1 is not liable to bear the responsibility of payment of compensation awarded under the Tribunal's decision.

16. She submits that respondent No. 1 is a body corporate and is possessed of not only wherewithal but is also equipped to deal with all sorts of contingencies and claims and yet had ignored to appear before the court. Now veering around it is sought to be claimed that respondent No. 1 is not liable to pay compensation, trying to reason that out.

17. She submits that the applicant is in dire need of compensation amount. His day to day life is worsening. His entitlement to the compensation has been considered and granted by the Tribunal. While the Tribunal has held respondents No.1 and 2 liable to 50% compensation, yet respondent No. 1 on its own got it apportioned and has deposited 25% amount in this court. This is too much of overreaching.

18. Respondent No. 1 has claimed a character of financier and as such, not being liable to pay any compensation is being pleaded before this court, however, even said submission, as on the date is not supported by any material. Beyond the grounds in the appeal, no further tangible material had been placed on record worth consideration.

19. She submits that in the process twelve years have passed and the applicant, who is not economically sound and his economic condition is getting deteriorated day by day, is in dire need of the amount. She submits that in the circumstances, the applicant be allowed to withdraw the amount and the applicant is prepared to furnish security for withdrawal of the amount.

20. On the other hand, Mr. Gangakhedkar, learned advocate

appearing for respondent No. 1, vehemently submits that respondent No. 1 absolutely is not liable to bear any amount of compensation. He submits that respondent No. 1 is financier of the vehicle and not the insurer. The insurer of the vehicle had not been arrayed as party by the claimants. It is the responsibility of the owner of the vehicle to keep the financier indemnified. Said duty has not been discharged in the present case by the owner. During the course of submissions, learned advocate for respondent No. 1 purports to state that there is Exhibit-38 a copy of RTO document, in the claim proceedings, which gives indication of that the vehicle having been hypothicated to respondent No. 1. He further submits that neither the vehicle had been in possession of the appellant nor the appellant had any control over its user. He submits that in this situation, the vehicle had been in possession, control and user of the real owner. He, therefore, submits that respondent No. 1 is absolutely not liable to bear payment of compensation and as such, urges that the request for withdrawal under the application may not be considered and it would be difficult for respondent No. 1 to recover the amount from the applicant, since according to learned advocate, there are strong chances of respondent No. 1 getting success in the appeal.

21. In order to support his submissions, learned advocate for respondent No. 1 purports to place reliance on a decision of the Supreme Court in the case of *"M/s Godavari Finance Co. V/s Degala Satyanarayanamma and Others"* reported in *AIR 2008 SC 2493* and particularly draws attention to observations as reproduced in paragraph No.17 thereof, since that being the situation, according to him, respondent No. 1 would not be liable to bear the burden of compensation. Mr. Gangakhedkar, also refers to yet another decision in the case of *"HDFC Bank Ltd V/s Kumari Reshma and Others"* reported in *AIR 2015 SC 290* and draws attention to Head Note "B" therein. He submits that since respondent No. 1 had never been in possession of the vehicle as observed and insurer being not on record and there being breach and contravention of legal provisions, liability cannot be fastened on to respondent No. 1. He further goes on to submit that it is not clear as to under which capacity respondent No. 1 had been arrayed as respondent in the claim petition. He further purports to submit that it will have to be examined whether respondent No. 1 in fact been served. He, therefore, urges not to indulge into the request and take up the first appeal for final hearing forthwith.

22. Learned advocate for the applicant, however, draws attention to a decision of Telangana and Andhra Pradesh High Court in the case of *“Apna Finance (Idea) Ltd V.s Uppalapati Ramana and Others”* reported in *2016 (5) ALT 326*, whereunder the High Court had adverted to both the decisions cited on behalf of respondent No. 1 *viz., Godavari Finance* and *HDFC Bank Ltd*., (*Supra*) and had then referred to a few other cases *viz., “Purnya Kala Devi V/s State of Assam, (2014) 14 SCC 1422 and “Mohan Benefit (P) Ltd. V/s Kacharji Raymalji”, (1997) 9 SCC 103* and has drawn attention to following extract from said judgment, reading, thus,-

> *“ 9. As we find from the judgment Centurian Bank Ltd. V. Reshma 2013 SCC Online MP 8349 of the High Court, it has placed reliance on Mohan Benefit (P) Ltd., V Cacharji Raymalji. In the said case, the second respondent was the registered owner of the truck and the appellant was the “legal owner of the vehicle as per hire purchase agreement”. The claim petition stated that at the time of the accident, the first respondent was driving the truck owned by the second respondent and the appellant and they had become liable, jointly and severally, to pay the damages claimed. The Tribunal, on the basis of the evidence led before it came to the Conclusion that hire purchase agreement was not the only document executed between the appellant and the second respondent. It had awarded damages against the appellant and the second respondent. The award passed by the Tribunal was affirmed by the High Court holding that the real documents executed between the parties at the time of the alleged loan had been kept back from the Court with ulterior motives and in that situation, all possible adverse inference*

should be drawn against the appellant therein; and that the hire purchase agreement that was produced be pressed into service for proving that the transaction was only of hypothication in the garb of hire purchase agreement. ”

23. She also refers to a judgment in the case of *"Mohan Benefit Pvt. Ltd V/s Kacharjai Raymalji"* reported in *LEX (SC) 1995 1 3* and the head note therefrom.

24. Reliance is placed by the appellant / respondent No. 1 herein on the decision in the case of *"M/s Godavari Finance Co.* (*supra*) however, in paragraph No. 11 of said judgment it has been observed that the appellant therein was admittedly a financier. In paragraph No. 12 therein extract of portion which is reproduced herein is thus –

> “ *We are not unmindful of the fact that ordinarily person in whose name registration certificate stands should be presumed to be owner, but such presumption can be drawn only in absence of any other material brought on record in this context otherwise required.* ”

25. The above observations will have to be taken into account while the name of the appellant is stated to be referred to in the RTO documents.

26. Observations as appearing under paragraph No. 12 in the decision of *"HDFC Bank Ltd"* (*supra*) are with reference to

documents placed on record and in the facts, circumstances and record of that case. The situation has not arisen in the present matter as yet.

27. Liability to pay compensation is being opposed referring to the judgments, however, it may have to be taken into account that respondent No. 1 had not appeared in the claim petition.

28. Having regard to that so far as the applicant being required to take expensive medical treatment and had to be bed ridden after the accident and so far as his need is concerned, the same does not appear to have been seriously doubted.

29. The situation emerges that there is delay in filing appeal. The appeal is yet not registered and pending for hearing on delay condonation application. As on the date, beyond the memorandum of appeal and copy of the impugned award of the tribunal, nothing has been placed on record on behalf of the appellant nor have the documents in support of the submissions advanced been produced.

30. Aforesaid apart, while granting interim stay to the operation and execution of the award, this court had specifically directed the appellant to deposit entire amount of award with

accrued interest thereon, yet it appears that amount has been deposited on self apportionment, and does not appear to be in compliance of the order passed by this court on 24th March, 2017 in civil application No. 3818 of 2017.

31. While the situation is as aforesaid and the circumstances under which the application for withdrawal has been moved do not appear far fetched or artificially created and the aspects of expenditure and loss of service are not in dispute, expediency would require application for withdrawal to be considered.

32. Looking at passage of time and the need expressed not being seriously disputed, it would be expedient to allow the application. In the circumstances, taking overall view of the matter and having regard, particularly to that the applicant appears to be in need of the amount deposited in this court and is fairly willing to furnish security for withdrawal of the amount, it appears, in the circumstances to be equitable to allow the applicant to withdraw the amount deposited by respondent No. 1 in this court, subject to giving solvent security to the satisfaction of the Registrar (Judicial).

33. As such, the application is allowed. The applicant is permitted to withdraw the amount deposited by respondent No.

1 along with accruals on furnishing solvent security to the satisfaction of the Registrar (Judicial).

34. At this stage, learned advocate for respondent No. 1 seeks stay of the order, however, looking at the financial strength of the appearing parties and that the amount deposited is on self apportionment and further that it would be difficult to accede to the request being made, after twelve years after the accident had occurred, the request of respondent No. 1 is rejected.

[SUNIL P. DESHMUKH, J.]

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