IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2855 OF 2017
(Maharashtra State Road Transport Corporation, Dist.Ahmednagar
Vs. Sanjay Rambhau Kolhe and others)
WITH
WRIT PETITION NO.2856 OF 2017
(Maharashtra State Road Transport Corporation, Dist.Ahmednagar
Vs. Nirmala Laxman Kolhe and others)

Mr.M.K.Goyanka, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 19/07/2018

PER COURT :

1. In both these identical matters, the record reveals that though an appearance has been entered on behalf of the respondents, none has remained present on the last two days. None appears even today.

2. The issue in both these petitions is with regard to the impugned orders dated 30/09/2016 passed by the Motor Accident Claims Tribunal, Ahmednagar in MACP Darkhast No.113/2009 and 114/2009 below Exh.1 and 19 and 1 and 20, respectively.

3. The contention of the petitioner is that the respondents, who were the claimants before the Tribunal, have been paid their entire

dues as have been granted by the Courts. The compensation granted by the Tribunal was enhanced by this Court in the first appeal proceedings. The detailed chart of making the payments to these respondents are set out in paragraph No.4 on page Nos. 3 and 4 in the memo of these petitions.

4. Further grievance is that the respondents/claimants, who have preferred the execution proceedings, had put forth their claims through the darkhast. As the petitioner was consistently making the payments, the Executing Court considered the contentions of the claimants in application Exh.10 in both the darkhast proceedings and passed an order on 12/11/2011 and 12/08/2011, respectively concluding that a *Jangam Warrant* is not required to be issued and since only the costs of the appeal and copying fees are to be recovered from the judgment debtor, the darkhast proceedings can be disposed of after the judgment debtor deposits the amount of the costs of appeal and copying fees. Yet, the Executing Court has subsequently entertained application Exhs.1 and 19 in the first case and 1 and 20 in the second case and has directed the petitioner/Corporation to deposit additional amounts of Rs.52,000/- and Rs.1,48,896/-, respectively.

5. I find from the calculations set out by the petitioner that the claimants are now claiming interest by adding the interest component with the principal amount, which would therefore work out to seeking interest over interest. The Executing Court had already passed an order on Exh.10 that entire claim amounts have been paid by the Corporation either by depositing them in the Tribunal or in the High Court. If the Executing Court was to notice that its earlier order on Exh.10 was a result of incorrect calculations, it should have observed in the impugned orders that those calculations were wrong and then it should have stated in the order as to which component was not already paid and hence payable.

6. I find from paragraph No.5 of the impugned order in the first case that the Executing Court has merely mentioned that "*calculations were not mentioned in it and after discussing with both the parties they were directed to submit their calculations to crystallize the same.*" (reproduced verbatim). I also find that the payments made by the petitioner as set out in paragraph No.4 of the memo of the petition, were not considered by the Executing Court.

7. In view of the above, it is necessary, in the interest of justice that the Trial Court should reconsider the contentions of the

petitioner/Corporation especially in the light of paragraph No.4 set out in the memo of the writ petitions and thereafter assess as to whether any amounts are outstanding towards the Corporation. The contention of the Corporation that copying charges and costs of appeal have also been paid, shall be considered by the Executing Court.

8. In view of the above, the impugned orders dated 30/09/2016 in both the execution proceedings are quashed and set aside. The Executing Court shall reconsider the contentions of the Corporation in the light of the pleadings set out in paragraph No.4 of the memo of the petitions and arrive at a fresh conclusion as to whether any amounts are due to be paid by the Corporation.

(Ravindra V.Ghuge, J.)