

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 10847 OF 2018
IN
WRIT PETITION NO. 6852 OF 2018

LIMBAJI LAXMAN RATHOD (DIED) AND OTHERS
VERSUS
M/S. SAURASHTRA CEMENT LTD. AND OTHERS

Advocate for Applicant : Mr. P.S. Chavan.
Advocate for Respondent No. 1 : Mr. Y.B. Bolkar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 31st August, 2018.

PER COURT :

1. The applicants are the original claimants whose right to compensation granted under the Motor Accidents Claim has been upheld by the judgment of this Court (Coram : V.K. Jadhav, J.) dated 08th March, 2017, in First Appeal No. 2849/2016. The relevant clauses of the said order after the original award dated 19th December, 2015, was subjected to a modification by this Court read as under :

“III. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Osmanabad dated 19.12.2015 in MACP No.106/2010 is hereby modified in the

following manner :-

a] The respondents no. 1 and 2 do pay compensation of Rs.33,74,840/- (Rs. Thirty Three Lacs Seventy Four Thousand Eight Hundred and Forty only) including the 'No Fault Liability' amount of Rs.50,000/- to the claimants with interest @ 9% p.a. from the date of application till realization of the entire amount.

IV. In case, if the amount is paid by the appellant-registered owner in total to the claimants, the appellant registered owner is at liberty to recover the amount from the Respondent Dattatraya S/o. Nandkumar Dubey. “

2. The said decree in the First Appeal which was filed by Saurashtra Cement Limited, in which, they partly succeeded, has been put to execution by the original claimant. Considering that the transfer certificate from Osmanabad to Mumbai, was accepted by the impugned order dated 08th February, 2018, by the executing Court, the petitioner approached this Court. By order dated 02nd July, 2018, passed by this Court (Coram : S.P. Deshmukh, J.) the petitioner was directed to deposit half of the amount, which in any

case is expected to be paid to the claimant, in this Court. An amount of Rs. 29,09,367/- was deposited on 30th July, 2018.

3. This application, is therefore, moved by the claimants seeking leave to withdraw the said amount as, despite a rigorous trial from 15th March, 2010, till this date, they are yet to receive the benefits though the sole bread earner has passed away in a vehicle accident.

4. Learned counsel for the petitioner, on the one hand, does not oppose the withdrawal of the amount, but on the other hand, makes a request that the claimants should tender an affidavit undertaking that they would not claim further amounts from the petitioner, in view of the direction of the first appellate Court reproduced above.

5. I find that the issue raised in the petition is not as regards how much amount should the original respondents are to pay. This issue is already closed by the judgment of this Court in the First Appeal, operative part of which is reproduced above.

6. In this backdrop, as this Court, while staying the execution

proceedings found it appropriate to subject the petitioner to depositing its share of the compensation amount, I do not find that these applicants are required to tender any specific undertaking that they would preclude themselves from making any further claim against the petitioner. The said issue is to be dealt with by the executing Court. The quantum of compensation is also not to be adjudicated upon as that also has been settled by this Court while deciding the First Appeal.

7. In view of the above, this application is allowed and the claimants are permitted to withdraw the amount of Rs.29,09,367/- by making individual applications for withdrawal, duly identified by the advocate, with recent photographs, recent address proof and copies of the Election Commission Voter ID Card/Aadhar Card. The said amount would be shared equally by the applicants keeping in view the directions of the MACT, Osmanabad, by which, remaining 50% of the amount is to be kept in fix deposit receipt in the name of the widow Smt. Surekha W/o. Subhash Rathod in any Nationalized Bank for the period of three years from the date of investment.

8. It is made clear that each of these applicants would submit

an affidavit undertaking, by which, they would undertake to re-deposit the amount in this Court in the event of any dispute amongst themselves and the petitioner/Company would stand indemnified in view of any such dispute.

(RAVINDRA V. GHUGE, J.)

S.P.C.