

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER No. 716 OF 2017
WITH
CIVIL APPLICATION No. 956 OF 2017 IN A.O. No. 716 OF 2017**

Mahipati Shripatrao Bhosale ... Appellant/Applicant
Vs.
Smt. Mangal Pandurang Ghevari & Ors. ... Respondents

**WITH
CIVIL APPLICATION No. 56 OF 2018 IN A.O. No. 716 OF 2017**

Smt. Mangal Pandurang Ghevari & Ors. ... Applicants
Vs.
Mahipati Shripatrao Bhosale ... Respondent

Mr. Paras Yadav, Advocate for the appellant.
Mr. Nikhil Pawar, Advocate for respondent nos. 1 to 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **23rd February, 2018.**

P.C.:

This Appeal from Order is directed against the order dated 6th January, 2017 passed by the learned Member, Motor Accident Claims Tribunal, Kolhapur in M.A.C.P. No. 4 of 2015. The widow, children and parents of deceased Pandurang Ghevaru have filed the Application under section 166 of the Motor Vehicles Act for compensation before the Motor Accident Claims Tribunal, Kolhapur. The appellant is the owner and driver of the offending vehicle. The vehicle was not insured. In the said matter, the appellant appeared

through advocate. However, thereafter he neither filed written statement nor appeared in further proceedings and therefore, the trial Court passed the judgment and award and trial proceeded ex-parte against him. He was directed to pay the amount of Rs.2,73,500/- along with interest @9% p.a. from the date of the Application. The execution proceedings are filed by the respondents. Thereafter, the appellant moved an Application before the Tribunal for setting aside exparte judgment and award dated 14th July, 2011 and restoration of the matter. The said Application was rejected with cost of Rs.5,000/- on 6th January, 2017. Hence this Appeal.

2. The learned counsel for the respondents/original applicants has rightly raised objection that this Appeal from Order under Order 43 is not maintainable, as the judgment is pronounced not under Order 9 Rule 13 of the Code of Civil Procedure but the judgment is pronounced under Order 8 Rule 10 of Code of Civil Procedure. He relied on the judgment of Single Judge of this Court in the case of **Lachhiram Chudiwala (H.U.F.) vs. Bank of Rajasthan Ltd.**, reported in 2007(1) Mh. L.J. 315.

3. The learned counsel for the appellant submitted that the

appellant be allowed to file First Appeal against the said order. He further submitted that the appellant is a poor mason and was travelling various places, therefore, he could not give proper instructions to his advocate who appeared before the Tribunal.

4. The appellant has appeared in the Claim Application before the Tribunal and has engaged an Advocate, however, thereafter neither the appellant nor his advocate attended the matter and filed written statement. Therefore, the trial Court proceeded ex-parte against the appellant and claim was allowed. However, this judgment is pronounced under Order 8 Rule 10 of the Code of Civil Procedure. In the list of sub-rule (1) Order 43, the order passed under Order 8 Rule 10 is not mentioned and hence the Appeal from Order is not maintainable. It is necessary for the appellant to file First Appeal. This view is also supported by the ratio laid down by the Single Judge of this Court in the case of **Lachhiram Chudiwala (H.U.F.)** (*supra*). The learned counsel for the appellant is allowed to convert Appeal from Order into First Appeal.

5. The order of status quo to the execution proceedings to continue for four weeks. However, the respondents/claimants, who

are the contesting the execution proceedings, prays that they have filed Application for withdrawal of the amount. In view of the facts and circumstances of the case and as the accident has occurred on 19th June, 2008 and since then the claimants did not receive any amount, I am of the view that the claimant No. 1/widow is allowed to withdraw Rs.50,000/- along with interest accrued thereon and claimants/parents of the deceased are allowed to withdraw Rs.12,500/- each along with interest accrued thereon on an usual undertaking.

6. Civil Application No. 56 of 2018 is allowed and is disposed of accordingly.

(MRIDULA BHATKAR, J.)