

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2298 OF 2005

Shri Gopal Dattoba Rout

...Appellant

Versus

Rajendra Appaso Kagwade

...Respondent

.....

Mrs.Nutan S.Moily for the Appellant.

Mr.T.S. Ingale for the Respondent.

.....

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JANUARY 17, 2018**

P.C.:

1. This Appeal is directed against the judgment and award dated 9th March, 2005 passed by the learned III-Additional District Judge & Member, Motor Accident Claims Tribunal, Sangli in Claim Petition No. 265 of 2003.

2. The respondent, who is the original petitioner, on 29th April, 2003 was driving motorcycle and was proceeding towards Sangli-Miraj Road along with his neighbor. A truck loaded with sand bearing No. MH-10-A-2274 gave dashed to the motorcycle. Due to

the impact, he fell down and sustained injury. He has spent Rs. 48,800/- for medical treatment. There is also loss of income. He has filed the claim application for compensation against the appellant, who is the owner of the truck, and also against the driver of the truck. The truck of the appellant was not insured. The appellant –owner of the truck appeared in the matter and filed written statement resisting the claim. The respondent/petitioner has tendered the evidence and has examined PW -5 Dr. Sawant on the point of injury and medical treatment. The learned Member of the Tribunal, after considering the oral as well as documentary evidence, held respondent nos.2 liable to pay compensation of Rs.1,12,800/- along with interest @ 9% p.a. from the date of filing of the petition till its realization. Being aggrieved by the said judgment and award, appellant/respondent no.2 has filed this Appeal.

3. The learned Counsel for the appellant has pointed out that this Court by order dated 3rd July, 2013 has dismissed the connected First Appeal No. 1953 of 2006. She has submitted that the judgment and award passed by the learned Member of the tribunal is illegal and is to be set aside.

4. The learned Counsel for the respondent/ original petitioner has submitted that till today, the respondent/original petitioner did not get money from the appellant. He has further submitted that though his Civil Application No. 8 of 2017 for withdrawal of an amount of Rs. 25000/- has been allowed by this Court vide order dated 16th January, 2017, but he is unable to get details that how much amount is deposited by the appellant. He has further submitted that the respondent/original petitioner has filed the execution proceedings, but papers are lost. He has further submitted that the respondent/original petitioner needs money which he has spent on medical treatment.

5. Heard submissions. Perused the record and proceedings. Also perused the order of dismissal of First Appeal No.1953 of 2006 passed by this Court on 3rd July, 2013. The learned Member of the tribunal has considered the evidence and assessed it properly. The amount of compensation granted by the tribunal is reasonable. There is no merit in the Appeal. Hence, the First Appeal is dismissed.

6. The appellant is liable to pay the entire amount of the compensation alongwith interest accrued thereon as mentioned in

the impugned judgment and award of the tribunal. If the execution proceedings are not found, then it can be reconstructed. The respondent/original petitioner is allowed to file fresh execution proceedings. It is advisable if the appellant himself comes forward and offers reasonable good amount to the respondent/ original petitioner, but it is upto the respondent/ original petitioner to accept the same proposal. The statutory amount of Rs.25,000/- deposited in this Court at the time of filing of appeal is to be transferred to the Motor Accident Claims Tribunal, Sangli. The respondent/ original petitioner is allowed to withdraw the same.

(MRIDULA BHATKAR, J.)