

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.185 OF 2014

United India Insurance Co. Ltd.	...Petitioner
vs.	
M/s. Bhimale & Sons & Ors.	...Respondents

- Mr. V. Y. Sanglikar, Advocate for Petitioner.
- Mr. Prasad Kulkarni, Advocate for Respondent Nos.3 & 4.
- Ms. M. S. Bane, AGP for respondent / State

**CORAM : C. V. BHADANG, J.
DATE : 19th DECEMBER, 2019**

P.C. :

1. The challenge in this petition is to the order dated 12/12/2013 passed by the Member, Motor Accident Claims Tribunal (MACT), Pune, in Darkhast No.228/2012. By the impugned order, the petitioner has been directed to deposit the amount of interest within a period of one month, failing which a warrant is directed to be issued as against the petitioner.

2. The brief facts necessary for the disposal of the petition may be stated thus -

That the respondent Nos.3 to 7 (original claimants) had filed Claim Petition No.438/1994 against the petitioner and the respondent Nos.1 and 2. The petitioner was the respondent No.3 before the Tribunal in the said claim petition. The aforesaid claim was filed seeking compensation of Rs.1 Lakh on account of death of

one Bhalu Tambe, in a vehicular accident. The Tribunal by a judgment and award dated 30/11/1994 partly allowed the petition and the present respondent Nos.1 and 2 were held jointly and severally liable to pay a compensation of Rs.75,000/- (inclusive of no fault liability) to the respondent Nos.3 to 7 alongwith interest. The claim petition in so far as the petitioner is concerned was dismissed, thereby exonerating the petitioner from the liability to pay the compensation.

3. The respondent Nos.1 and 2 challenged the same before this Court in First Appeal No.488/1995 in which the present petitioner was respondent No.6. This Court by a judgment and order dated 21/12/2010 allowed the appeal in following terms.

i. That part of the impugned award by which claim petition was dismissed as against the opponent No.3 is set aside.

ii. The impugned judgment and award is modified by directing that the opponent Nos.1, 2, 2A and 2B alongwith opponent No.3 to the claim petition shall be jointly and severally liable to pay compensation awarded under the impugned award.

iii. Appeal is partly allowed on above terms with no order as to costs.

iv. If the compensation amount deposited by the

Appellants has been withdrawn by the claimants, it will be open for the Appellants to recover the said amount from the 6th respondent – insurer by executing the same award;

v. Civil Application No.2644 of 2009 does not survive and the same is disposed of accordingly.

4. It is a matter of record that the respondent No.2 had deposited an amount of Rs.1,86,000/- in compliance of award passed by the Tribunal which was withdrawn by respondent Nos.3 to 7, the original claimants. The respondent No.2, 2A, 2B filed Darkhast No.228/2012 for recovery of said amount of Rs.1,86,000/- alongwith further sum of Rs.4,17,600/-, thus total amounting to Rs.5,87,760/- before the Tribunal at Pune. It is in these Darkhast proceedings that the impugned order has been passed.

5. I have heard learned counsel for the parties and perused record.

6. It is submitted by the learned counsel for the petitioner that whatever amount was paid by the respondent Nos.2, 2A, 2B to the original claimants has been paid / deposited by the petitioner and these respondents cannot claim, anything, over and above what they have paid / deposited towards compensation which is payable to the original claimants. It is submitted that the petitioners cannot enrich themselves at the cost of the accident or in pursuance of the award of

the Tribunal.

7. Learned counsel for the respondents submitted that the petitioner is liable to pay further amount as claimed in execution of the award.

8. Having heard the learned counsel for the parties, I find that the impugned order cannot be sustained. The Tribunal has held that the matter involves interpretation of para 14 of the order of this Court in First Appeal No.488/1995. However, all that this Court has held in para 14 which is reproduced above is that the petitioner (the 6th respondent in the First Appeal) is under an obligation to satisfy the award and if the compensation amount deposited by the appellants in First Appeal No.488/1995 is withdrawn by the original claimants, it will be open for the appellants to recover said amount from the petitioner by executing the said award. As noticed earlier, all that the applicants in the Darkhast have deposited in the execution of the award is Rs.1,86,000/- which is paid / withdrawn by original claimants and therefore, at the highest it is only an amount of Rs.1,86,000/- which can be recovered by the appellants (who now claim to be the decree holders in the Darkhast) from the petitioner and not over and above what they have deposited / paid to the original claimants. This however shall not preclude the original claimants from executing the award, if there is any amount recoverable under the said award, against the petitioner. However, in any case, the respondents who now claim to be the decree holders in Darkhast No.228/2012 (who are not the original claimants) cannot

seek the recovery of amount over and above what they have paid to the original claimants.

9. In the result, the petition is allowed. The impugned order is hereby set aside. The Execution Application No.228/2012 is hereby dismissed.

Rule is made absolute in the aforesaid terms, with no order as to costs.

(C. V. BHADANG, J.)