

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6760 OF 2019

Sau.Reema Rajendra Chikhale and anr. .. Petitioners
Vs.
Shri Sandesh Narhari Kumbhar and anr. .. Respondents

Mr.Samarth R.Moray, for the Petitioners.
Mr.Saumen Vidyarthi I/b Ms.Neha D.Nagotaneekar, for the
Respondents No.1 & 2.

CORAM : M.S.KARNIK, J.

DATE : 30th AUGUST, 2019

P.C. :

. The petitioners by filing this Petition under Article 226 of the Constitution of India are challenging the judgment and order dated 20/03/2019 passed by the Motor Accident Claims Tribunal, Alibag, Raigad (for short 'M.A.C.T.'). Learned Counsel for the petitioners during the course of argument submitted that he is aggrieved by clauses 3 & 4 of the operative part of the order passed by MACT. His argument is that in terms of provisions of Section 60 of Code of Civil Procedure, 1908 (for

short 'C.P.C.') which provides for property liable to attachment and sale in execution of decree, the salary to the extent of 1/3rd in execution of decree can be attached. His argument is that salary excluding the first one thousand rupees and 1/3rd of the remainder can be attached. Learned Counsel for the claimant submits that the award is for huge amount and the Judgment Debtor is avoiding implementation of the award. He would submit that Section 60 of C.P.C. cannot be read to frustrate genuine claim for recovery of the amount awarded by M.A.C.T.

3. In my opinion, provisions of Section 60 of C.P.C clearly contemplates that salary to the extent of first one thousand rupees and two thirds of remainder in execution of any decree other than a decree for maintenance is not liable for attachment or sale. In this view of the matter, clauses 3 & 4 of the impugned order calls for interference and needs to be modified. In clauses 3 & 4 of the impugned order dated 20/03/2019 instead of words “2/3rd”, the same should be read as 1/3rd excluding the first one thousand rupees.

4. Since this is a limited challenge in this Petition, the Petition is partly allowed in the above terms. Rest of the order of the Tribunal does not warrant interference.

5. Needless to mention that the petitioner is always entitled to set off for the amount which has been previously paid by him to the claimants.

(M.S.KARNIK, J.)