

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Application No.691/2019

in

First Appeal No.526/2013

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. Prosper D'souza for the Applicant
Ms. Shraddha Chheda I/b. Navdeep Vora
& Associates for the Respondent

CORAM : K.K.TATED, J.
DATED : JULY 15, 2019

P.C.

1 Pursuant to the praecipe filed by the learned counsel for the Applicant the matter is taken on production board for speaking to the minutes of order dated 19.06.2019.

2 On page 1 para 4 line 7 and page 3 para 7 line 3 instead of Rs.7,28,000/- it should be 7,78,000/-.

3 On page 2 para 5 last line, page 2 para 6 line 2 & line 4 and on page 5 line 5 the words **Insurance Company** be deleted.

4 Order dated 19.06.2019 stands corrected accordingly.

5 Corrected order reads thus:

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

**CIVIL APPLICATION No.691 OF 2019
IN
FIRST APPEAL No.526 of 2013**

Smt. Sunita Bharat Parmar and Ors. ...Applicants
Vs.
BEST Electricity Supply and Transport
Undertaking ...Respondents

Mr. Prosper D'Souza for Applicants
Mr. Madhukar Kalzunkar a/w. Ms. Shraddha Cheeda i/b. M/s.
Navdeep Vora and Associates for Respondents

CORAM : SHRI K.K. TATED, J.

DATE : JUNE 19, 2019

P.C.:

1. Not on Board. At the request of learned counsel for the Applicants, matter is taken on board for urgent orders.
2. Heard learned counsel for the parties.
3. By this application, the Applicants Original Claimants are seeking permission to withdraw the amount awarded by the Motor Accident Claim Tribunal, Mumbai in Application No. 553 of 2005 by the judgment and award dated 11th October, 2011.
4. The learned counsel for the Applicants submits that in accident, which occurred on 24th December, 2004, the Claimant No.1 Sunita Bharat Parmar lost her husband, who was 33 years' old. He was doing business and earning near about Rs.10,000/-

per month. Therefore, they filed claim petition under section 166 of the Motor Vehicles Act. He submits that the Tribunal after considering the evidence on record held that the Claimants are entitled sum of Rs. 7,78,000/- by way of compensation with interest @ 7.5% pa. from the date of application till realization.

5. The learned counsel for the Applicants submits that the Applicant No.1 is a household wife, she do not have any source of income. She has to maintain her two minor children and, therefore, she requires the said amount for the day-today expenses and education of both the minor children and other needs. He submits that though the accident occurred in 2004, till today except the NFL amount, she has not received any amount. Hence, he submits that the Applicants may be permitted to withdraw the awarded amount of compensation deposited by the Appellant.

6. On the other hand, learned counsel Mr. Madhukar Kalzunkar for the Respondents-Original Appellant vehemently opposed the present civil application. He submits that the trial court erred in coming to the conclusion that the Appellant is liable to pay the compensation to the Claimants. He submits that in the present proceedings, the issue was about the negligence and, how, the accident was occurred. He submits that findings given by the trial Court in paragraph 10 of the impugned judgment is not correct. He submits that this Court in the judgment of **Raphik Mehbub Pakhali Vs. Anantkumar Pravinkumar Jajal and Ors. [1(1996) ACC 641]**, in paragraph 11 held as follows:

“11. Section 144, therefore, gives a overriding effect to the provisions of Chapter X. it must be borne in mind that under the un-amended Act of 1939 similar provisions were contained in Section 92A to 92E. The provisions are undoubtedly of a beneficial nature meant to provide for immediate relief to the accident victim either in case of death or permanent disability. Legislature has very clearly provided in Sub-section (3) of Section 140 that it is not necessary for the claimant to plead or establish any negligence on the part of the owner of the vehicle or of any other person. Sub-section (4) of Section 140 makes the matter beyond doubt by providing that even if the Claimant himself was at fault or had contributed to the fault of somebody else, this cannot defeat his claim for compensation. In the face of such mandatory provisions, it is difficult to appreciate the reasoning of the learned trial Judge in paras 4 and 5 of his judgment, which, I have reproduced in para 8 above. The learned trial Judge has come to the conclusion that merely because a criminal case was pending against the appellant, it prima facie showed that the appellant was at fault. This is an astonishing proposition of law. A criminal case may be filed against a person who may be entirely innocent or who may be entirely innocent or who may be partially at fault along with some other persons who may have a major share in the negligence or the fault. Merely because a criminal case is pending, it is impermissible to come to the conclusion that the appellant is at fault and that the owner of the vehicle or

its driver is not at fault. That apart, the learned Judge has totally ignored the provisions of Section 140 of the Motor Vehicles Act, 1988.”

7. Learned counsel for the Appellant further submits that the Tribunal erred in coming to the conclusion that the Claimants are entitled to pay compensation of Rs. 7,78,000/- with interest @ 7.5% p.a. from the date of application till realization. The said amount is on higher side. He submits that they have good chance of success. He submits that if the amount is withdrawn by the Claimants, then nothing will survive in the First Appeal and, therefore, there is no substance in the present civil application and same is required to be dismissed with costs.

8. I heard both the counsels at length. It is to be noted that in the present proceeding, Claimant No.1 lost her husband in an accident, which occurred on 24th November, 2004. On the date of accident, the deceased was just 33 years' old and he was earning near about Rs.10,000/- p.m. from his business. The Applicant No.1 is a household wife. She do not have any source of income. Apart from that she has to maintain her two minor children and, therefore, she requires the amount for education as well as day-today expenses for her children. Considering these facts, I am of the opinion that the Applicants have made out a case for allowing this civil application and they are entitled to withdraw some awarded amount of compensation during the pendency of the First Appeal. It is to be noted that in the present proceeding, the tribunal at the time of awarding the compensation, relied on

the FIR Ex.21 and Spot Panchnama Ex.2, holding that the driver of the offending bus was negligent and so the Opp. Party is liable to pay compensation to the Applicants. Paragraph 11 of the said judgment reads thus:

“11. It is needless to mention here that after registration of the offence investigating officer had drawn the Panchnama at spot which is admittedly in front of Bharat Tea Stall on Acharya Donde Marg, Near Seweree Naka. So the Spot Panchnama Ex.22 is also fully testified and corroborates with the applicants case that the deceased died due to accidental injury on the spot which is mentioned in spot Panchnama Ex.22. So after considering material on record which is fully consistence with the documentary evidence i.e. certified copies of FIR Ex.21 and Spot Panchnama Ex.22 I have to say that the accident took place on the negligent part of the driver of the offending bus and so the Opp. Party is liable to pay compensation to the applicants on account of death of deceased. In this way I answer Issue No.1 in affirmative accordingly.”

In view of this, the judgment in the case of Raphik Mehbubu Pakhali (supra) relied by the learned counsel for the Appellant is not applicable in the facts and circumstances of the present case.

9. Hence, following order:

(a) Claimant No.1 -Smt. Sunita Bharat Parmare is entitled to withdraw Rs.3,00,000/- from the awarded amount of

compensation with accrued interest without furnishing any security but subject to outcome of the First Appeal.

(b) The Tribunal is directed to invest the remaining balance awarded amount of compensation in fixed deposit of any Nationalized Bank, initially, for a period of one year and same to be continued till further orders.

(c) The Applicants are at liberty, if they so desire, to prefer an application for withdrawal of further awarded amount of compensation and that application be heard on its own merits.

(d) Civil Application stands disposed of accordingly.

[K.K. TATED, J.]