

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1130 WRIT PETITION NO.15576 OF 2019

BABASAHEB RAMBHAU GHATGE
VERSUS
EKNATH APPARAO AHER AND OTHERS.

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Advocate for Petitioner : Mr. R J Nirmal
Advocate for Respondents 1-3 : Mr. Mahesh P. Kale
Advocate for Respondent 4 : Mr. M R Deshmukh

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CORAM : V.K. JADHAV, J.
Dated: February 26, 2021

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PER COURT :-

1. Heard both sides.
2. The respondents/claimants have filed Motor Accident Claim Petition No.324 of 2007 under section 166 of the Motor Vehicles Act for grant of compensation on account of death in a motor vehicular accident. Initially, the Tribunal has passed the award against the owner by exonerating the insurance Company on the ground of breach of policy conditions. Being aggrieved by the same, the petitioner has preferred First Appeal No.998 of 2011 and the matter was remanded to the learned Member of the Motor Accident Claims Tribunal,

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Parbhani for fresh hearing. During the pendency of the said appeal before this Court, petitioner has deposited an amount of Rs.1,99,000/- (Rs. One Lakh Ninety Nine Thousand), however, since the matter was remanded to the Tribunal, the amount so deposited before this Court came to be transferred to the Tribunal.

3. It appears that after remand, the member Motor Accident Claims Tribunal, Parbhani has allowed the claim petition partly and further directed the respondents to pay the compensation of Rs.4,16,000/- (Rs. Four Lakh Sixteen Thousand) to the petitioners with interest from the date of petition till its full realization.

4. Learned counsel Mr. Deshmukh appearing for respondent No.4/insurer submits that respondent/Insurer accepting the said award and liability fastened on it deposited the entire amount alongwith interest before the Tribunal. The learned counsel appearing for the respondents-claimants submits that the

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respondents/claimants have withdrawn the said amount.

5. It appears that in the pending R.D.(MACP) No.47 of 2019 petitioner herein/original J.D. No.1 has filed an application Exh.6 for refund of the said amount in terms of the Judgment and award passed by the Tribunal after remand, however, the learned Member of the Motor Accident Claims Tribunal, Parbhani has rejected the said application by impugned order dated 9.10.2019 below Exhibit-6 only for the reason that there is no document placed on record to indicate that respondent/insurer has not preferred any appeal. Learned counsel appearing for the Respondent No.4/insurer submits that by accepting the liability in terms of the said judgment and award passed by the Tribunal after remand, respondent no.4/insurer has deposited the entire amount under the award and no appeal has been preferred, the petitioner is entitled for the refund of the said amount. In view of the same, the

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order passed below Exh.6 cannot be sustained. Hence, following order.

ORDER

- i. Writ Petition is hereby allowed.
- ii. The impugned order dated 09.10.2019 passed by the learned Member, Motor Accident Claims Tribunal below Exhibit 6 in R.D. [MACP] No.47 of 2019 is hereby quashed and set aside.
- iii. Application Exhibit-6 is hereby allowed in terms of its prayer clause.
- iv. Writ Petition accordingly disposed off.

(V.K. JADHAV, J.)

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