IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4095 OF 2018
IN
FIRST APPEAL NO. 1177 of 2018

Kusumdevi Ramniwas Yadav & ors .. Applicants
Versus
Deshraj A. Singala, since deceased
thru LRs & Anr .. Respondents

…

Mr. T.J. Mendon for the applicants.
Ms.Gaurangi Patil with Ms.Monica Mayekar for the respondent no1.

CORAM: BHARATI DANGRE, J.
DATED : 7th DECEMBER 2021

P.C:-

1 The First Appeal is instituted by the insured – Deshraj Singala, being aggrieved by the judgment delivered by the MACT, Raigad in MACP No.104 of 2009, in a petition seeking compensation under Section 166 of the Motor Vehicles Act. One Ram Nivas Yadav who was engaged by the appellant in the work of repairing diesel pumps which was run by him, met with an accident on the unfateful day i.e. on 5th December 2008, when he repaired a diesel pump of a trailer and asked the driver of the trailer to take a test drive. The trailer being driven at a high

speed hit Ram Nivas, and he was crushed in between the trailer and trolley and succumbed to the injuries. At the relevant time, his age was 38 years and his dependents, being his widow and four minor children lodged a claim before the MACT.

2 The claim was allowed and the claimants were held entitled to an amount of Rs. 14 lakhs, including the amount of 'no fault liability'. The insurer and the insured were held jointly and severally liable to make the payment to the claimants with the interest @ 7%. The Insurance Company was directed to deposit the amount along with the interest in the Tribunal and was granted liberty to recover it from respondent no.1 without filing separate suit, but by initiating appropriate proceedings before the Executing Court.

The Tribunal also directed that before releasing the amount to the claimants, a notice shall be issued to the respondent no.1 (appellant herein) – the insured who will then furnish a security for the entire amount and the vehicle mentioned in the order, was directed to be attached as a part of security and in case of default by the respondent no.1, in making the payment, it was directed to be disposed off and the amount be made good. The amount of compensation was directed to be divided between the five claimants to the tune of Rs.2,80,000/- plus proportionate costs plus interest. Out of the amount payable to the claimant no.1, an amount of Rs.1,50,000/- was directed to be invested in Nationalized Bank and same was the direction issued in respect of claimant nos.2 to 4 for investing the said amount in the Nationalized Bank for the period stipulated.

3 Being aggrieved, the insured Deshraj Singala, brought an appeal.

4 During the pendency of the Appeal, the consent terms were drawn and placed before this Court under the signature of Kusumdevi Ramniwas Yadav i.e. Claimant no.1 as well as all five claimants on one hand and appellant on the other. Based on the said terms, this Court disposed of the First Appeal on 4th October 2018 by recording as under :-

> *"5 Appellant is present in person before the Court, along with his Advocate. Respondent Nos.3 and 5 are present before the Court, along with their counsel. They submit that the matter is amicably settled between the parties and in view of the said settlement, Appellant Deshraj Singala to pay Respondent Nos.1 to 5 herein the amount of Rs.1,00,000/-, aggregating to Rs.5,00,000/-, by way of Demand Draft', payable at Mumbai. Accordingly, the 'Demand Draft' is drawn and it is filed along with the 'Consent Terms'.*
>
> *6 In view thereof, the 'Consent Terms' are taken on record, read and marked as "X" for the purpose of identification. The 'Decree' be drawn in terms of the 'Consent Terms'.*

> *7 The amount of compensation, which is deposited by the Appellant in pursuance of the order passed by this Court, while granting the stay, be repaid to the Appellant."*

5 By the present Civil Application No.4095 of 2018, the claimants/respondents in the Appeal have approached this Court with a claim that the alleged consent terms between the parties are sham and they deny they had ever consented for accepting a meager amount of Rs.5 lakhs (Rs.One lakh for each of the claimant) and the order of the High Court recording the settlement and disposing the First Appeal on 4th October 2018 is sought to be quashed and set aside.

6 I have the learned counsel Mr.Mendon for the applicant and Ms.Gaurangi Patil for respondent no.1 and learned counsel for the Insurance Company.

The submission of Mr.Mendon is to the effect that in furtherance of the order of the Tribunal, the appellant executed a security bond on 17th April 2018 where he categorically made a statement :

> *"I being a owner offending vehicle bearing no. MH-06AG-8365 hereby undertake and declare that I will deposit the entire amount in the Court which has been deposited by the opponent no.2 Insurance Company as per the award passed in the said matter. Therefore, I hereby bind myself to deposit the said amount as stated above and if, I failed to deposit the said amount the*

> *insurance company shall be at liberty to attach my vehicle noted above and recover the said amount from me".*

7 On 26th April 2018, the Tribunal refused to accept the security bond :-

> *"The say of insurance company was called and it had raised objection to make payment. The opponent No.1 has given undertaking and not security. The opponent no.1 has produced R.C. Book of his vehicle to show as to when his vehicle was manufactured. The vehicle has its depreciation. There is no document on record to show whether vehicle is hypthecated or not. The so-called security bond is vague Hence, Security bond given by applicant/opponent is not accepted as it do not secure the amount of award"*

Thereafter, the Tribunal called say of the Insurance Company with respect to the surety bond and the appellant sought stay of the execution of the judgment upon which on 16th August 2018, it was recorded as under :-

> *"4 Due to fault of on the part of applicant the petitioners are not getting the award amount and for the same he is very responsible. The are not petitioners are poor persons. They are in starvation position. They are come on the street due to death of their earning member. If, due to his fault the petitioners could not get the amount and something happened with the petitioners he may have responsible for the same. The petition is disposed of and no proceeding*

> *pending before the Tribunal. Only proceeding about to give the payment to the petitioners which is administrative in nature is going on. In such situation the applicant respondent No.1 filed this application before this Tribunal to stay the award as he wanted to file the appeal before the Hon'ble High Court".*

8 The Application was therefore, rejected and he was directed to execute the security bond of himself or his surety within eight days so that the claimant will get payment immediately. Failure to comply with the said direction, the Tribunal observed that necessary orders would be passed.

9 The appellant then brought out the consent terms before this Court and the learned counsel Ms.Patil placed reliance on the affidavit of the claimant under the signature of Jitendra Yadav, which he has filed before the MACT on 1st October 2018, wherein he state that the claimants are satisfied with the amount of Rs.One lakh each, and they will not proceed with their claim and whatever applications pending in the Court would be withdrawn by them. Similar affidavit is filed by claimant no.1 Kusum Ramnivas Yadav on 1st October 2018.

Based on the aforesaid affidavit, the submission of counsel is to the effect that the parties themselves have agreed to accept a lesser amount than the amount which they were entitled to receive under the Award, and merely because the amount accepted is less, the compromise cannot be doubted. Further, her submission is, not only before the Tribunal but before this Court also, the consent terms were tendered which were signed by all the five claimants with an endorsement that the consent terms have been read over to them in Hindi and they have understood its purport and they have affixed their signatures, only after asserting its contents. Her argument, is to the effect, his fortify that the claimants had agreed to accept lesser amount and if they have done so willingly, there is no reason why this gesture of theirs should be looked with suspicion.

It is submitted by Mr.Mendon that the cheque of Rs.One lakh which was due under the alleged compromise was never presented though made over to the applicants and resultantly, inspite of their claims being allowed, in the year 2016 itself, till date, they have not received any amount thereunder.

Learned counsel Mr.Mendon would submit that the whole transaction being settled at an amount of Rs.Five lakhs itself creates a doubt and particularly when the claimants are now asserting their claim to the effect that the compromise presented to the Court was not without their consent but the appellant in order to avoid his liability has tricked them, taking advantage of the close acquaintance and the consent terms are drawn.

10 I find some substance in the submission of Mr.Mendon, since even I am taken by surprise when the

compensation which has been awarded to the claimants is the amount of Rs.14 lakhs along with interest @ 7% to be paid till its realization and based upon the said calculation, the Insurance Company has already deposited an amount of Rs.20 lakhs with the Tribunal.

Despite when the liability has also been fastened on the appellant, it appear that he has come up with a novel way of depicting that the claimants have settled the amount to the extent of Rs.Five lakhs which appear to be highly improbable. In any case, since the claimants are now before this Court, praying that the consent terms shall not bind them, I am ready to believe them for one simple reason that the claimants who were held entitled for decretal amount by the Tribunal cannot be deprived of the benefits, which they agreed to take merely on the basis of a compromise, which has been questioned by them by filing the present application.

11 The liability, rightful or so, under the judgment can be determined in the First Appeal, on it being heard on merits. In these circumstances, I am inclined to allow the Civil Application No.4095 of 2018. On the application being allowed, First Appeal stand restored to its file.

Needless to state that the amount of compensation deposited by the appellants which was directed to be remitted to him in terms of paragraph no.7 of the order dated 4th October

2018 stand withdrawn and the amount of Rs.Seven lakhs which was deposited in the Court shall be brought back. If the applicant is desirous of staying the impugned judgment, he shall deposit the entire decretal amount before the Tribunal within a period of four weeks from today. Since a request is made to grant some indulgence, I deem it appropriate to permit deposit of an amount of Rs.Seven Lakhs with the Tribunal within a period of two weeks and the remaining decretal amount within a period of four weeks, thereafter.

12 Subject to the aforesaid, there shall be stay to the effect and operation to the impugned judgment. On failure to do so, the claimants are granted liberty to execute the judgment and award, against the appellant. On the stay being, not continued even the Insurance Company is entitled to take steps in furtherance of paragraph no.4 of the impugned judgment.

13 Civil Application is made absolute in aforesaid terms.

SMT. BHARATI DANGRE, J

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