

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

919 CIVIL APPLICATION NO.3693 OF 2022
IN FA/2709/2021

SHANTARAM ATMARAM PATIL AND OTHERS
VERSUS
BHUSHAN S/O RAVAN KUWAR (PATIL) AND OTHERS

...
Advocate for Applicants : Mr. Ajay D. Pawar.
AGP for Respondent/State: Mr. S. P. Deshmukh.
Advocate for Respondent No.2 : Mr. T. K. Sant.
Advocate for Respondent No.3: Mr. Abhijit G. Choudhari.
...

CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 26th April, 2022.

P.C.:

. It is an application for withdrawal of compensation amount moved by the applicants/claimants.

2 Heard Mr. Pawar, learned counsel for the applicants/claimants, Mr. T. K. Sant, learned counsel for respondent No.2 and Mr. Abhijit Choudhari, learned counsel for respondent No.3/insurance company.

3 It is revealed during the course of argument that respondent No.4/Smt. Dipali Kamlesh Patil was one of the original claimants. After death of her husband, she is now re-married and leading happy married life with her husband as stated in affidavit sworn by applicant No.1/Shantaram Atmaram Patil. She is not interested in the present litigation. Be that as it may, I have to decide the application regarding

withdrawal of compensation to the extent of these two applicants.

4 Mr. Pawar, learned counsel for applicants invited my attention to the impugned judgment and submitted that the defence raised on behalf of insurance company is turned down by the Tribunal after recording sound reasons. The information about accident was given on the very same day to Dhule Police Station and after registration of zero number, it was transferred to concerned police station. He submits that though there was delay in lodging FIR, the Tribunal has considered all these aspects as well as involvement of the vehicle and rightly fastened liability on the insurance company alongwith owner of the vehicle.

5 Mr. Choudhari, learned counsel for the insurance company strongly opposed to allow this application. He submitted that the accident in question took place on 15th June, 2017. The FIR came to be registered after fifteen days delay i.e. on 30th June, 2017. In initial intimation it is stated that dash was given by unknown vehicle. By way of subsequent development, the name of the driver of motorcycle came to be implicated, which is very much suspicious. He is disputing the involvement of the vehicle. He submitted that the claimants have failed to prove the involvement of the vehicle for want of such evidence. The appellant/insurance company has preferred the appeal

mainly on the ground of false involvement of the vehicle coupled with other issues. He, therefore, strongly opposed to allow this application.

6 Mr. T. K. Sant, learned counsel for respondent No.2 argued on the similar lines.

7 On going through the impugned judgment, it is revealed that concerned witnesses were examined before the Tribunal including eye-witnesses to the accident. Though initially it was informed that accident was caused by unknown vehicle, after registration of crime and after thorough investigation, it was revealed that the motorcycle driver was responsible for the accident. The Tribunal has discussed about the same on the basis of evidence and accordingly, held that driver of motorcycle is responsible for the accident on the basis of evidence of two eye-witnesses. It is further evident from the record that soon after the accident, intimation was given to Dhule Police Station vide AD No.0 of 2017 and later-on it was transferred to Songir Police Station. During the course of investigation, factual aspects were revealed and the involvement of the motorcycle. At this stage, it may not be appropriate to touch merits of the appeal. The findings recorded by the Tribunal are *prima-facie* in favour of the applicants/claimants. The applicants/claimants are the parents of the deceased. They have lost their son in motor vehicular accident. Having

considered the submissions of both the sides and looking to the part of dependency of the applicants on the income of their son, who is now no more, it is necessary to allow the applicants/claimants to withdraw 50% of the amount of compensation out of their respective shares determined by the Tribunal, which would meet the ends of justice and also protect the interest of the appellant/insurance company.

8 It is requested by Mr. Pawar, learned counsel for applicants that the amount may be transferred to the MACT, Dhule for making payment to the applicants/claimants. Hence, the following order is passed:

ORDER

- I. The application is hereby allowed as under:
- II. The Registry is directed to transfer the amount of compensation to the extent of 50% out of the respective shares of applicant Nos.1 and 2 to the MACT, Dhule for making necessary payment thereof as per the procedure.
- III. Applicant Nos.1 and 2 are hereby permitted to withdraw 50% of the amount of compensation out of their respective shares determined by the Tribunal in the impugned judgment delivered in MACP No.535 of

2017 on furnishing usual undertaking to the satisfaction of the MACT, Dhule.

- IV. Remaining 50% of the compensation amount with accrued interest thereon shall be invested in fixed deposit account in any Nationalized Bank initially for a period of one year with renewal clause.
- V. The application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

nga