

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3861 OF 2015

United India Insurance Company Ltd., ... Petitioner
Pune

V/s.

Jayashree Santosh Kokar and Ors. ... Respondents

Mr. V.Y. Sanglikar for the petitioner.

Mr. Chetan C. Agarwal with Mr. Vipin Kambli and Mr. Aman Batar for
respondent no. 5.

CORAM : VALMIKI SA MENEZES, J.

DATED : DECEMBER 22, 2022.

P.C. :

. By this Writ Petition the petitioner–Insurance Company has challenged order dated 10th September 2014 passed by the Additional Member Motor Accident Claims Tribunal, Pune in Claim Application No. 651 of 2011 rejecting the petitioners application dated 14th June 2012 marked at Exhibit ‘22’ before the Tribunal. The application rejected by the impugned order is styled as an application under Section 10 of Civil Procedure Code, 1908 and has prayed for the following reliefs. :-

- a) The Hon. Court may kindly allow this application for stay of proceeding.

- b) The proceeding of present claim application be stayed till the disposal of Review Application and Claim Application No. 183/2010.
- c) Present applicants be directed to approach to Hon. MACT at Ahmednagar in Claim No. 183/2010,
- d) Claim application may be returned to the applicants as it is not maintainable on same cause of action.
- e) The permission may be granted to amend the application if it is became necessary.

2. It is the case of the petitioner that on the death of one Santosh Chhagan Kokar, a Claim Petition bearing No. 183 of 2010 came to be filed before the MACT at Ahmednagar, claiming compensation of Rs. 6 lakhs under section 166 of the Motor Vehicle Act, 1988. That application was filed by one Sahil and Tisha, two minor children of the deceased- Santosh Chhagan Kokar, through their mother Smt. Parina Baban Chavan. The said Claim Petition No. 183/2010 was settled in the Lok Adalat and in terms of the settlement award dated 06.02.2011 was passed by the MACT, Ahmednagar for the amount of Rs. 3,75,000 and accordingly, the petition was disposed of. Consequent upon disposal of this petition, the entire compensation has been disbursed, retaining an amount of Rs. 75,000/- to each of the minor claimant, which was invested in their name in a Nationalised Bank. Thus, the petitioner claimed that its liability came to an end under the contract of insurance.

3. Thereafter, the petitioner claims that the respondent no. 1,

purporting to be the first wife of the deceased, and the respondent nos. 2 and 3 claiming to be the minor children of the deceased, through respondent no. 2 filed Claim Petition no. 651/2011 before the MACT, Pune on 03.10.2011, claiming compensation on the death of late Santosh Khokar caused by the accident. The petitioner submitted that the subject matter of this claim being based upon the death of said Santosh Kokar due to very same act of negligence / accident the claim would be barred .

4. The petitioner further submits that on receiving notice of MACT Claim Petition No. 651 of 2011, the petitioner filed an application at Exhibit – 22 of the file of the Tribunal, claiming four reliefs enumerated above. The same came to be rejected by the impugned order which has held that the provision of section 10 of Civil Procedure Code would not apply to the case at hand, as the claimants are not litigating under the same title as the claimants in the earlier Claim Petition bearing No. 183 of 2010.

5. After notice was issued in the matter and all parties were served, it is only the respondent no. 5, the owner of the bus involved in the accident who has appeared in the matter, the contesting respondent i.e. the original applicants have not put any appearance. By order dated 28th April 2015, while granting ad-interim of stay of proceeding before the Tribunal, it was specifically recorded that considering that controversy in the petition is a narrow one, the petition would be finally disposed of at the stage of admission.

6. Heard learned counsel for the parties. With their consent the petition is finally heard at the stage of admission.

7. It is the contention of the learned counsel for the petitioner that the provisions of section 10 of Civil Procedure Code would apply to the present case and the petitioner would be entitled to an order of stay of the proceedings of the MACT in Claim Petition No. 651 of 2011. It is further submitted that notwithstanding the fact that there was no earlier proceeding between the same parties or between the parties under whom they or any of them claim, this would not come in the way of the Tribunal to stay proceeding. In the alternate, the learned counsel for the petitioner contends that since the review application was pending before the MACT at Ahmednagar filed in Claim Petition No. 183 of 2010, requesting that Court to recall its award under the circumstance that another petition had now been filed person claiming to be dependent, the pendency of such review petition should be considered to the pendency of earlier proceedings as envisaged by section 10 of Civil Procedure Code.

8. Learned counsel for the petitioner further submits that since there cannot be two claims claiming compensation from the death of one deceased, as is the situation in the present case, the second claim being one by the children of the deceased through his first wife, was not maintainable, since the claim had been fully satisfied by passing of an award in Claim Petition No. 183 of 2010.

9. He further argues that in these circumstances, the Claim

Application No. 651/2011 ought to be returned to the applicants and is not maintainable on the same cause of action; the applicants be directed to approach the MACT at Ahmednagar to claim compensation under the award which has already been passed in Claim Petition no. 183 of 2010.

Mr. Saglikar, learned counsel for the petitioner further contended that without prejudice to his earlier submissions, the provisions of Section 151 of Civil Procedure Code would also apply and the MACT would possess inherent powers under the code to reject the claims filed in Claim Application no. 651 of 2011 or to stay the claim petition until the review application has been decided in Claim Petition no. 183/2010.

10. During the course of the arguments, the learned counsel for the petitioner sought further adjournment in the matter, stating that he wished to cite certain judgments as precedent; the matter being one of the year 2015 and the ad-interim stay of the proceedings before the Tribunal having operated for seven years, the request for further adjournment was rejected.

11. The provisions of section 10 of Civil Procedure Code would be applicable only to any suit or proceeding, in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same two parties, or between parties under whom they or any of them claim to be litigating under the same title; essentially there has to be pendency of a previous proceedings for the

trial in the second proceedings to be stayed. In the present case the previous proceedings, i.e. Claim application no. 183 of 2010 had been finally disposed of and the compensation under the award had been disbursed to the claimants in the said application. In this set of facts, therefore, the provisions of section 10 or principles underlying those provisions would have no application to the case at hand.

12. Section 166 of the Motor Vehicle Act, 1988 provides for filing of an application for compensation arising out of an accident, in which all or any of the legal representatives of the deceased whose death has resulted from the accident may be claimants. Proviso to sub section 1 of section 166 envisages that where all the legal representatives of the deceased have not been joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

13. Considering this position, neither an application under section 10 of Civil Procedure Code for stay of the claim petition nor any grant of relief of stay of Claim Application No. 651 of 2011 until the disposal of the review application in Claim Petition no. 183 of 2010 be maintainable. So also, dismissal of this petition would not preclude the petitioner for moving any proceedings in Claim Petition No. 651 of 2011 raising the issue of maintainability of the petition and having the same decided as an preliminary issue. It is also made clear that the Petitioner is at liberty to move such proceedings as punishable at law

before the MACT at Ahmednagar in Claim Application No. 183 of 2010 to reopen the same in the present circumstances.

14. For the reasons stated above the Writ Petition is dismissed. No costs.

15. Learned counsel for the petitioner prays for continuation of the ad interim relief of stay of the proceedings before the MACT for a further period of two weeks. The prayer is rejected.

(VALMIKI SA MENEZES, J)