

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7959 OF 2023

Jalindar Temghare & anr.

.. Petitioners

v/s.

1. Smt. Jyoti Ramdas Jagtap
and Ors.

.. Respondents

...

Mr. Ashok B. Tajane, Advocate for the Petitioners.

...

CORAM : SANDEEP V. MARNE, J.

DATED : JULY 21, 2023.

P.C. :

1. By this petition, Petitioner challenges order dated December 21, 2022 passed by the Motor Accidents Claim Tribunal, Pune directing Petitioners to deposit an amount of Rs.5,00,000/- as a pre-condition for setting aside *ex-parte* Award.

2. It appears that Petitioners were duly served with notices in the claim but they failed to remain present. The Tribunal therefore proceeded to decide the claim *ex-parte* and by judgment and order dated August 3, 2017 directed the Petitioners to jointly and severally

pay compensation of Rs.28,56,300/- alongwith interest at the rate of 9% from the date of the application till realisation. Since the Petitioners failed to pay the amount awarded, execution proceedings were started against them. At such a belated stage, Petitioners filed the application on February 8, 2018 for recalling the *ex-parte* Award. They also filed application for condonation of delay in filing the recall application. By order dated March 20, 2020 the Tribunal allowed the application for condonation of delay subject to payment of costs of Rs.3,000/-. After the cost was paid, the application for setting aside the *ex-parte* order was heard on merits and by order dated December 21, 2022 the Tribunal has allowed the application subject to the Petitioner depositing the amount of Rs.5,00,000/- within one month. Thus, the order dated December 21, 2022 though passed in favour of the Petitioner, he challenged the said order to the limited extent of direction to deposit amount of Rs.5,00,000/-.

3. Mr. Tajane, the learned Counsel appearing for the Petitioner would submit that imposing such a condition for deposit of a heavy amount would put a onerous burden on the Petitioners, which they cannot discharge. He would further submit that the Petitioners do not have any source of income and would find it extremely difficult to make deposit of the amount as directed by the Court.

4. After having heard learned Counsel for the Petitioners, it is seen that the accident in question occurred on November 26, 2015.

The vehicle of the Petitioners was apparently not covered by insurance policy. Petitioners were duly served with the notice by the Tribunal. However, they failed to appear before the Tribunal and defend the claim. The Tribunal therefore allowed the claim by its order dated August 3, 2017 directing the Petitioners to pay an amount of Rs.28,56,300/- to the Respondents alongwith interest at the rate of 9%. Though the Award was passed on August 3, 2017, Petitioners once again did not adopt any remedy thereon in a reasonable period of time. It is only in the year 2020 that Petitioners moved an application for setting aside the *ex-parte* Award. They also sought relief of condonation of delay. The Tribunal initially allowed the application for condonation of delay by imposing costs of Rs.3,000/-. However, while allowing the application for setting aside the *ex-parte* Award, the Tribunal has put a condition of deposit of Rs.5,00,000/- for considering the merits of the Petitioner's contention.

5. Considering the amount of compensation awarded by the Tribunal of Rs.28,56,300/- plus interest at the rate of 9%, the awarded amount is likely to travel to the tune of more than Rs.35,00,000/-. In such circumstances, direction to deposit the amount of interest of Rs.5,00,000/- as a pre-condition for setting aside the *ex-parte* Award, could not have been objected to. The Petitioners have succeeded before the Tribunal in getting the *ex-parte* order set aside. Considering the larger liability of payment of

compensation of Rs.28,56,300/- plus interest, the amount directed by the Tribunal to be deposited in the Court, does not appear to be unreasonable or excessive. I accordingly do not find any merits in the petition. Writ Petition is **dismissed** without any orders as to costs.

6. However, the Petitioners would be at liberty to deposit the amount of Rs.5,00,000/- as directed by the Tribunal within a period of four weeks from today.

NEETA
SHAILESH
SAWANT

(SANDEEP V. MARNE, J.)

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