

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13863 OF 2022

Prabhakar Madhav More

.. Petitioner

Versus

Balasaheb Raosaheb Mane – Deshmukh & Anr.

.. Respondents

-
- Mr. Dinesh Bhosale for Petitioner
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 10, 2023

P.C.:

- 1.** Heard Mr. Bhosale, learned Advocate for Petitioner.
- 2.** The present Writ Petition takes exception to the order dated 26.09.2022 passed by the Motor Accident Claim Tribunal, Malshiras (for short “**MACT**”) below Exh. 1 in an Application filed by Petitioner (original Applicant No. 1) seeking withdrawal of the claim amount from the MACT. Perusal of the said order reveals that the Application has been rejected with a direction that claim amount deposited by the Insurance Company and lying deposited in the MACT be refunded back to the Insurance Insurance Company after expiry of 60 days along with interest, if any.
- 3.** After hearing Mr. Bhosale, learned Advocate for Petitioner and appreciating the facts of the case, on 18.11.2022, this Court had passed the following order:-

"1. Heard Mr. Bhosale, learned counsel appearing for the Petitioner. He states that the Petitioner and his wife were the original claimants before the Maharashtra Accident Claim Tribunal at Malshiras. By Judgment and Award dated 31st March 2022 passed by the learned Member, Maharashtra Accident Claim Tribunal, Malshiras and District Judge-1, Malshiras, the Respondent Nos.1 and 2 were jointly and severally directed to pay an amount of Rs.14,78,000/- to the Petitioner along with interest at the rate of Rs.7.5% p.a. He states that, accordingly, the said amount has been deposited before the learned M.A.C.T., Malshiras by Insurance Company on 26th July 2022. In the application of Applicant No.1 seeking withdrawal of the amount deposited by the Insurance Company, the Ex-officio Member, MACT, Malshiras directed that the amount of Rs.20,61,373/- (which is consisting of said amount of Rs.14,78,000/- along with accrued interest) be refunded to the Insurance Company after expiry of 60 days. The said order was passed on the assumption that the main application is abated. Mr. Bhosale submits that the main M.A.C.P. No.01 of 2016 was disposed of by Judgment and Award dated 31st March 2022. He submitted that the matter was completely argued, kept for judgment and in the meanwhile, Applicant No.2 expired on 10th February 2021 and therefore, the application cannot be abated. In any case, the said MACP was filed by the Petitioner and his wife and therefore, there cannot be any abatement against the Petitioner. He submits that Petitioner is legal heir of his deceased wife and therefore also there cannot be any abatement.

2. In the light of above submission, issue notice before admission returnable on 16th December 2022.

3. In addition to Court notice, the Petitioner to serve the Respondents by private notice and file affidavit of service before the returnable date.

4. Till the next date, office of M.A.C.T., Malshiras is directed not to refund the said amount of Rs.20,61,373/- to the Respondent No.2 – Insurance Company."

4. It is seen that the office of the MACT was directed to withhold the refund of the amount of Rs. 20,61,373/- to the Insurance Company.

5. Record indicates that Respondent Nos. 1 and 2 are duly served. In addition thereto, Petitioner was also directed by this Court to inform the date of today's hearing to the Respondents. Notice has

been issued by the learned Advocate for Petitioner to Respondent Nos. 1 and 2 which indicate that Respondents have acknowledged the same. Copies of the same are filed on record by Mr. Bhosale and the same are marked as “X” & “X1” for identification. Petitioner is directed to file the original copies of the same on record and file of this Court within a period of one week from today.

6. Considering the nature and controversy in the present case, the present Writ Petition cannot be protracted any longer. The facts in the present case are gross. Original claimants namely father and mother of the deceased son (elder son) had filed the Original Claim Application before the learned MACT on the death of the elder son in an accident which took place on 23.03.2015. After the trial, learned MACT by its judgment & order dated 31.03.2022 declared the award awarding an amount of Rs. 14,78,000/- to the claimants. Unfortunately in the interregnum, original claimant No. 2 i.e. mother of the deceased expired on 10.02.2021. The amount as awarded by the learned MACT came to be deposited in the Court. Admittedly, no Appeal has been filed by the Respondents

7. One of the reason attributed for dismissal of the Application below Exh. 1 is that the original claim came to be abated. It has not been considered by the learned MACT that it could not have been so in view of the fact that there were two claimants namely the father and

the mother and it is only that the original claimant No. 2 had expired. Mr. Bhosale has informed the Court that original Claimant No. 2 is survived by her husband i.e. original Claimant No. 1 and one younger son who is studying. He has crossed 18 years of age, hence, he would be appropriate and necessary party before the learned Trial Court for seeking withdrawal. Mr. Bhosale would submit that he has filed the necessary affidavit of no-objection for seeking withdrawal of the said sum. Be that as it may, considering that the award passed by the learned MACT has not been challenged by the Respondents, it would not be in the interest of justice to prolong the refund of the amount to the parties any longer. However, considering that the younger son is not a party in the proceedings before the learned Trial Court and he is the legal heir of original claimant No. 2 and considering that he has filed the affidavit, it is directed that he shall file an undertaking before the learned MACT giving his no-objection and that should suffice.

8. In view of the above observations and findings, Petitioner namely Prabhakar Mahadev More is permitted to withdraw the amount along with accrued interest deposited by the Insurance Company before the learned MACT. The impugned order dated 26.09.2022 is quashed and set aside.

9. As soon as the Application is made by original Claimant No. 1 before the learned MACT, the same shall be allowed within a period

of one week from the date of such Application and the Petitioner shall be allowed to withdraw the deposited amount along with the entire accrued interest thereon.

10. With the above direction, Writ Petition is disposed.

11. Parties / learned Trial Court (MACT Court) are directed to act on an authenticated copy of this order.

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

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signed by
RAVINDRA
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