IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2056 OF 2015
IN
FIRST APPEAL NO.683 OF 2015

United India Insurance Company Limited .. Appellant

Vs.

Mr.Vithal Ramakant Bhanushali and Ors. .. Respondents

Mr.Rahul Mehta i/b M/s.KMC Legal Venture for the appellant

CORAM : K.K.TATED, J.
DATED : 12/06/2015

PC:

1 Not on board. At the request of Advocate for the applicant, matter is taken on board for urgent orders.

2 Heard the learned counsel for the applicant.

3 This application is preferred by Insurance Company for stay of the operation and implementation of the award dated 30.1.2015 passed by MACT, Thane in MACP No.880 of 2010.

4 The learned counsel for the applicant submits that the respondent claimant filed Execution Application No.34 of 2015 for recovery of awarded amount. He submits that if entire amount is recovered by respondents claimants in Execution Application, nothing

will survive in the present proceeding. Hence, there is urgency in the present matter.

5 The learned counsel for the applicant submits that the Tribunal erred in coming to the conclusion that the respondent claimant is entitled sum of Rs.17,21,580/- with 7% interest by way of compensation. He submits that the Tribunal failed to consider the negligence on the part of the deceased. He submits that because of negligence on the part of the deceased Insurance Company is not required to pay any compensation. He further submits that the Tribunal in paragraph 18 of the impugned award held that both the offending vehicles were liable for accident and held negligence of 50% on each vehicle.

6 The learned counsel for the applicant submits that the cheque issued by the owner of the vehicle towards payment of premium was dishonoured and therefore, Insurance Company is not liable to pay any compensation. It is to be noted that the Tribunal in paragraph 21 of the impugned order specifically held that the applicant Insurance Company issued policy for a period of 14.11.2009 to 13.11.2010 whereas the accident occurred on 27.8.2010. The Trial Court also held in paragraph 22 of the impugned order that though the Insurance Company issued letter about cancellation of the policy, date of cancellation was not mentioned in the said letter.

7 The learned counsel for the applicant submits that the Tribunal erred in coming to the conclusion that the earning of the deceased was Rs.30,000/- per month. He further submits that respondents claimants

have not placed on record any documentary evidence to show that the deceased was earning Rs.30,000/- per month. Hence, compensation awarded by the Tribunal was on higher side. It is to be noted that the deceased was driving his own car and earning about Rs.30,000/- per month. It is difficult to accept the contention made by the learned counsel for the applicant that the tribunal has considered income of the deceased Rs.30,000/- per month on higher side, because deceased was holding car in his own name.

8 In view of above mentioned facts and the submission made by the learned counsel for the applicant, I am satisfied that the applicant has made out a case for allowing Civil Application but at the same time they have to deposit entire awarded amount in the Tribunal within four weeks from today.

9 In the present proceeding, in an accident which occurred on 27.8.2010 respondent claimant lost their son Bharat Bhanushali. On the date of accident, he was 22 years old. He was earning about Rs.30,000/- per month from his business. Considering these facts, I am of the opinion that respondents claimants are entitled to withdraw some amount without furnishing any security subject to outcome of the First Appeal. Hence, following order:

1) Operation and implementation of the judgment and award dated 30.1.2015 passed by MACT, Thane in MACP No.880 of 2010 is stayed on the condition that applicant to deposit entire awarded amount along with interest and cost if any in the Tribunal within four weeks from today, failing

which Civil Application shall stand dismissed without further reference to the court.

2) If amount is not deposited within stipulated time, respondents claimants are entitled to proceed with Execution Application for recovery of the amount.

3) If the amount is deposited within stipulated time as stated hereinabove, Respondent Vithal R. Bhanushali and Smt.Kunda Vithal Bhanushali are entitled to withdraw 20% amount each without furnishing any security but subject to the outcome of the First Appeal.

4) Liberty granted to the respondents claimants to prefer appropriate application if they so desire for withdrawal of further amount and that application be decided on its own merits.

5) The Registry of this Court is directed to transfer the sum of Rs.25000/- if any deposited by the Insurance Company at the time of filing of First Appeal along with accrued interest, if any, to the Motor Accident Claims Tribunal, Thane in the account of MACP No.880 of 2010.

6) Civil application stands disposed off accordingly.

(K.K.TATED, J.)