IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.1210 OF 2014
IN
FIRST APPEAL NO.479 OF 2007

Smt. Surekha Babaso @ Balaso Patil & Ors. … Applicants

The United India Insurance Co. Ltd. … Appellant
Vs.
Smt. Surekha Babaso @ Balaso Patil & Ors. … Respondents

Mr. S. G. Thorat for the Applicants.
Mr. H. G. Misar for Respondent No.1.
Mr. P. D. Dalvi for Respondent No.4.

CORAM: K.K. TATED, J.
DATED : JANUARY 9, 2015

P.C. :

1. Heard the learned counsel for the parties. This Application is preferred by the original claimants for setting aside the order dated 08/10/2008 passed by the MACT, Ichalkaranji in MACP No.126/2005 directing the Applicant to furnish a solvent security to comply with the order passed by this court on 19/01/2007 in Civil Application No.2819/2006.

2. Few facts of the matter are;

In the present proceedings, the accident took place on 07/05/2002 in which the Applicant No.1 lost her husband Babasaheb Anna Patil. At the time of accident deceased was 36 years old and he was earning Rs.5277/- pm by serving in Jawahar Sahakari Sakhar

Karkhana Ltd., Hupari, Tq. Hatkanangale, Dist. Kolhapur. In a claim petition filed by the Applicant, the Tribunal, by its judgment and award dated 27/09/2005 held that the Applicants are entitled to recover sum of Rs.3,68,000/- with 7.5% p.a. interest by way of compensation.

3. Being aggrieved by the said award the original Respondent No.2 Insurance Co. preferred the present appeal which is admitted on 19/01/2007. The Insurance Co. also preferred Civil Application No.2819/2006 for stay of the judgment and award passed by the Tribunal. Prayer clause (a) of the Civil Application reads thus:

> *(a) Pending hearing and final disposal of this appeal, the execution and operation of said award passed in MACP No.126/2005 by Member of MACT Ichalkaranji on 29/07/2005 be stayed in the interest of justice.*

4. That Civil Application was decided by this court (Coram : A. S. Oka, J.) by order dated 19/01/2007, declining to grant any stay in favour of the Respondent Insurance Co. The relevant portion of the said order reads thus:

> *"………………However, the learned Member of the Tribunal has not exonerated the Applicant. Considering the contentions raised in the appeal, even if the Applicant succeeds in the appeal, the award against the insured will remain. In such event, the Applicant can always recover amount of compensation from the insured. Hence, stay cannot be granted. Application is rejected. it is made clear that withdrawal of the compensation amount by the claimants will be subject to final outcome of the appeal. The Applicant is granted time of eight weeks from today to deposit the amount. No coercive steps shall be taken against the Applicant for the period of eight weeks."*

5. Thereafter the Applicant moved the Tribunal for withdrawal of the said amount. At that time, the Tribunal passed impugned order dated 08/10/2008 calling upon the Applicant to provide a solvent security. Hence, this Civil Application.

6. The learned counsel for the Applicant submits that this court by order dated 19/01/2007 rejected the Civil Application No.2819/2006 for stay filed by the original Appellant Insurance Co. This court, at the time of rejecting the Civil Application, observed that the withdrawal of the compensation amount by the Applicant original claimant will be subject to the final outcome of the appeal. Nowhere this court directed the Applicant original claimant to provide any security for withdrawal of the said amount. Hence, the order dated 08/10/2008 passed by the Tribunal is contrary to the order passed by this court and therefore same be set aside and allow the Applicant to withdraw the entire amount deposited by the original Appellant Insurance Co.

7. On the other hand, the learned counsel for the for original Appellant Insurance Co. vehemently opposed the present Civil Application. He submits that this court, by order dated 19/01/2007 specifically made it clear that the withdrawal of the compensation amount by the claimant will be subject to the final outcome of the appeal. According to him, in view of these facts, the Applicant original claimant cannot withdraw the amount without furnishing solvent security. In support of this contention, the learned counsel for the Appellant Insurance Co. relies on the the decision of the Apex Court in

the matter of **Oriental Insurance Co. Ltd. Vs. Nanjappan and Ors. (2004) 13 SCC 224** particularly, paragraph 8.

> *8. Therefore, while setting aside the judgment of the High court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. The for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.*

8. On the basis of these facts and the submissions, the learned counsel for the Appellant Insurance Co. submits that this court should not allow the Applicant to withdraw the amount without furnishing security to the satisfaction of the court.

9. It is to be noted that in the present proceedings, this court by order dated 19/01/2007 rejected the Civil Application No.2819/2006 filed by the Appellant Insurance Co. for stay of the operation and

implementation of the judgment and award dated 27/09/2005 passed by the MACT Kolhapur in MACP No.126/2005. This court specifically observed in the said order that withdrawal of the compensation amount by the claimant will be subject to the final out come of the appeal. This court also observed in that order that even if the Insurance Co. succeeds in the appeal, they can recover the amount of compensation from the insured. This itself shows that this court specifically made it clear that the Applicant can withdraw the amount without furnishing any security. The aforesaid authority cited by the Appellant Insurance Co. is not applicable in the facts and circumstances of the present case.

10. It is to be noted that the original Appellant Insurance co. has not challenged the order dated 19/01/2007 rejecting their Civil Application for stay.

11. Considering the abovementioned facts and the submissions made by the learned counsel for the Applicant, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. Hence, the following order:

a) Order dated 08/10/2008 passed by the Tribunal below Exhibit 47 in MACP No.126/2005 is set aside.

b) The Applicants are entitled to withdraw the amount deposited by the Appellant Insurance Co. as per their share, without any security.

c) Civil Application stands disposed off accordingly.

(K.K. TATED, J.)