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

CIVIL APPLICATION NO. 4164 OF 2014
IN
FIRST APPEAL NO. 453 OF 2015

Ifco Tokio General Insurance Co. Ltd. … Applicant
V/s.
Sham Jagannath Shirke & Ors. … Respondents

Mr. A. P. Kulkarni for the applicant.
Mr. S. R. Ronghe for the respondent no.1.

CORAM : K. K. TATED, J.
DATED : 18/04/2015.

P.C.:

. Heard learned Counsel for the parties.

2 This Civil Application is preferred by insurance company for stay of operation and implementation of impugned judgment and award dated 18.08.2014 passed by the M.A.C.T. Pune in M.A.C.P. no. 1136 of 2008 by which the Tribunal held that the respondent claimant is entitled to compensation of Rs.38,00,000/- with interest 9% per annum.

3 The learned counsel for the applicant insurance company submits that the Tribunal erred in coming to the conclusion that applicant is liable to pay compensation to the claimant. He submits that the Tribunal erred in holding that the driver of the insured vehicle was negligent in driving when the accident occurred. He further submits that the driver of the insured vehicle i.e. Sohan Arun Bawane (original

respondent no.1) was not having valid driving licence. He further submits that even the vehicle which was driving by the deceased was not registered with the R.T.O. He submits that in view of this fact the insurance company is not liable to pay any compensation to the claimant.

4 The learned Counsel for the applicant submits that pursuant to the order passed by this Court on 10.12.2014, they deposited entire awarded amount in the Tribunal. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of impugned judgment and award against insurance company during the pendency of the First Appeal. He submits that if stay is not granted irreparable loss and injury will be caused to the applicant.

5 The learned Counsel for the applicant submits that if the entire amount is withdrawn by the claimant, nothing will survives in the present proceeding. He submits that if they succeed before this court in the present proceeding, then it will be very difficult for them to recover the entire amount from the claimant. He further submits that the respondent claimant can execute the award against the respondent no.4 the owner of the offending vehicle i.e. Motorcycle No. MH 29 S 6243. Hence, in the interest of justice this Hon'ble Court be pleased to stay the operation and implementation of impugned judgment and award.

6 On the other hand, the learned Counsel for the claimant respondent no.1 vehemently opposed the present Civil Application. He

submits that the Tribunal by Judgment and Award dated 18.08.2014 directing insurance company to deposit compensation in the Court within one month and recover the same from the owner of the offending vehicle. He submits that in view of Apex Court judgment in the matter of ***New India Assurance Co. Ltd. V/s. Kusum & Ors. in SLP (C) No. 3372 of 2007 dated 04.08.2009*** insurance company can recover the entire compensation from the owner of the offending vehicle by filing appropriate application for execution. Hence, there is no question of granting any stay in the present proceeding, restraining claimant from withdrawing amount deposited by the insurance company. Therefore, there is no substance in the present Civil Application and same to be dismissed with costs.

7 I heard both the sides at length. It is to be noted that in the present proceeding the insurance company specifically raised objection that Sohan Arun Bawne (original respondent no.1) was not holding a valid licence at the time of accident. He submits that even the offending motor vehicle was not registered with the R.T.O. at the time of accident. Considering these facts, it requires to decide whether the insurance company is liable to pay compensation and recover the same from the owner of the offending vehicle. Therefore, at this interim stage, the claimant cannot be allowed to withdraw the said amount without any condition. The authority relied by the claimant in the matter of New India Assurance Co. (Supra) is not applicable to the facts and circumstances of the present case. In that case, the matter was finally decided and therefore, the Apex Court held that it is not necessary for insurance company to file the suit for recovery of

compensation, they can recover the same just by filing the execution application.

8 In view of the above facts, the following order is passed.

ORDER

a) The operation and implementation of the impugned Judgment and Award dated 18.08.2014 passed by M.A.C.T. Pune in M.A.C.P. No. 1136 of 2008, is stayed in favour of insurance company till the hearing and final disposal of the First Appeal.

b) It is made clear that the respondent claimant, if he so desire, can execute Award against the owner of the offending vehicle according to law.

c) The Tribunal is directed to invest the amount in Fixed deposits of any Nationalised Bank, initially for the period of one year and same to be continued till hearing and final disposal of the First Appeal.

d) Civil Application no. 1267 of 2015 preferred by the claimant for withdrawal of amount will be decided on its own merits.

e) Civil Application is disposed of accordingly.

(K.K.TATED, J.)