

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.892 OF 2015
The New India Assurance Co.Ltd. Nagpur
..vs..
Smt. Lata Kamleshji Bhagat and ors

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S. Sanyal, counsel for the appellant.
Shri Anil Mardikar, senior counsel for R-1 to 4.

CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
DATED : DECEMBER 8, 2015.

Heard.

ADMIT.

Learned senior counsel Shri Anil Mardikar with
learned counsel Shri S.G. Joshi waives notice for
respondent Nos.1 to 4.

Civil Application (CAF) Nos.1691 and 1948 of 2015

Heard.

By Civil application No.1691 of 2015, the
appellant insurance company seeks stay of coercive
recovery and by later Civil Application No.1948 of 2015,
the claimants seek leave to withdraw the amount.

The appeal filed was belated and hence while
issuing notice on 23.7.2015, this Court granted *ad interim*

order subject to the appellant depositing entire amount of award with the Registry of this Court. Accordingly, the amount of Rs.1,02,17,524/- has been deposited with the Registry of this Court.

In view of this deposit, it is apparent that no coercive steps can be taken against the appellant insurance company.

Civil Application Nos.1691 of 2015 is accordingly allowed to that extent and disposed of.

While opposing prayer for withdrawal, learned counsel Shri Sanyal submits that as the deceased expired in October, 2005, his income for that year could not have been looked into. Learned senior counsel Shri Mardikar has invited our attention to paragraph No.32 of the award delivered by the MACT to urge that in fact the annual income of deceased for the year 2004-05 has been considered.

We find that the appellant insurance company has not pointed out the difference in annual income for the year 2005-06 or then year 2004-05. The main ground appears to be absence of a valid licence with respondent No.5 who was driving the vehicle insured with the appellant insurance company. The claimants are, therefore, not really interested in dispute of this nature.

We, accordingly, grant respondent Nos.1 to 4

leave to withdraw the amount in deposit with interest accrued thereupon for its appropriation in terms of directions contained in the impugned award dated 7.3.2015. However, they shall furnish an independent security for the said purpose and also an undertaking that, if necessary, they will refund the amount with such interest as this Court may in that event direct.

Subject to filing of such undertaking and surety, Civil Application No.1948 of 2015 is also allowed and disposed of.

JUDGE

JUDGE

!! BRW !!

...../-