

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

C.A.F. NO.2638/2014

IN

FIRST APPEAL STAMP NO.19006/2014

Lilaram Haribhau Rokde

..Versus..

Branch Manager, National Insurance Company Ltd. and others

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 6.2.2015

The owner of the vehicle has filed appeal challenging the award passed by the Motor Accident Claims, Tribunal. There is delay of 322 days in filing the appeal and, therefore, this application praying for condonation of delay is filed.

Though the learned advocate for the non-applicant no.1 - Insurance Company opposes the prayer made by the applicant, for the reasons stated in the application and the fact that the same

award is challenged by the non-applicant no.1 - Insurance Company in First Appeal No.1359/2013, the delay is condoned. The civil application is allowed.

FIRST APPEAL STAMP NO.19006/2014 & FIRST APPEAL NO.1359/2013.

Admit.

In First Appeal Stamp No.19006/2014 Shri H.N. Verma, the learned advocate, waives notice for the respondent no.1 and Shri Asghar Hussain, the learned advocate, waives notice for the respondents 2 and 3.

In First Appeal No.1359/2013 Shri Asghar Hussain, the learned advocate, waives notice for the respondents 1 and 2 and Shri H.S. Chitale, the learned advocate, waives notice for the respondent no.3.

The appellant in First Appeal No.1359/2013 - Insurance Company shall file private paper book within six months, failing which

the appeal shall stand dismissed without reference to Court.

**C.A.F. NO.2882/2013 IN FIRST APPEAL NO.1359/2013 & C.A.F.
NO.2639/2014 IN FIRST APPEAL STAMP NO.19006/2014.**

Civil Application No.2882/2013 is filed in First Appeal No.1359/2013 by the Insurance Company praying that during the pendency of the appeal the execution of the award be stayed.

Civil Application No.2639/2014 is filed by the appellant in First Appeal Stamp No.19006/2014 making the same prayer.

The Tribunal has granted compensation to the claimants saddling the liability on the owner of the vehicle, however, the Insurance Company is directed to pay the amount of compensation and to recover the amount from the owner of the vehicle.

The claim of the owner of the vehicle is that the vehicle was insured and, therefore, the owner is not liable to pay the amount of compensation.

Considering the nature of controversy, in my view, the claimants can be permitted to withdraw the amount deposited by the Insurance Company with the Registry of this Court. However, Shri H.N. Verma, the learned advocate for the Insurance Company, relying on the judgment given by the Hon'ble Supreme Court in the case of *Pramod Kumar Agrawal & Ors. V/s. Mushtari Begum & Ors.* reported at **III (2005) ACC 357 (SC)** has submitted that in such situation the owner of the vehicle be directed to furnish the surety for the amount deposited by the Insurance Company and which is permitted to be withdrawn by the claimants. Shri Chitale, the learned advocate for the owner of the vehicle has submitted that such directions could be issued if there is fundamental breach of the policy, which is not there in the present case and, therefore, there is no requirement of issuing the directions to the owner to furnish surety.

The liability to pay the amount of compensation will have to be decided at the time of final hearing of the appeal. However, the submission made on behalf of the Insurance Company appears to be

proper.

It is directed that the appellant in First Appeal Stamp No.19006/2014 (owner of the vehicle) shall furnish the solvent surety to the satisfaction of the Registrar (J.) of this Court till 13th March, 2015 for the amount deposited by the Insurance Company. If solvent surety is given by the owner of the vehicle within stipulated time, there shall be no coercive action against him. If solvent surety is not given by the owner of the vehicle till 13th March, 2015, the Insurance Company shall be entitled to recover the amount from the owner of the vehicle as per the impugned award. The civil applications are disposed of in the above terms.

JUDGE