IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4010 OF 2014
IN
FIRST APPEAL STAMP NO.27715 OF 2011

Smt. Harshela Yogesh Dangare and others .. Applicants

IN THE MATTER BETWEEN

National Insurance Co. Ltd. .. Appellant

Versus

Smt. Harshela Yogesh Dangare and others .. Respondents

Mr. T. J. Mendon for the Applicants.

Mr. Sanjay Krishnan i/by Harshada Rane for the Respondent/original Appellant.

CORAM : R.M. SAVANT, J.
DATE : 12th AUGUST 2016

P.C.

1 The above Civil Application has been filed for withdrawal of the amount deposited by the Appellant/Insurance Company in the MACT, Mumbai. The Applicants are the widow and two minor daughters and parents of the deceased one Yogesh Dangare who died in the accident in question. The accident occurred on account of collision between dumper and luxury bus in which the deceased was travelling. The luxury bus was insured with the Appellant Insurance Company and was therefore under

the policy amenable to third party risk. The MACT in the impugned judgment and Award has fixed composite negligence in the ratio of 60:40 between the dumper and the luxury bus. However, it has made the Insurance Company and the owner of the dumper and luxury bus jointly and severally liable for the payment of amount of Rs.7,34,000/- with 7.5% interest from the date of the filing of the application till realisation inclusive of the NFL. The challenge in the First Appeal is mainly on the ground that there is no segregation of the compensation payable on the basis of the ration of 60:40 and both the owners of the dumper and the insured vehicle have been made jointly and severally liable for the payment of the said amount.

2 In my view, having regard to the said challenge, it would be just and proper to permit the Applicants to withdraw an amount of Rs.4,00,000/- with commensurate interest. The Applicant No.1 to invest an amount of Rs.50,000/- each in the name of the minor children in fixed deposits of a Nationalized Bank initially for a period of two years and thereafter renewed for appropriate periods as deemed fit. The balance remaining after the withdrawal also to be invested in a fixed deposit of a Nationalized Bank initially for a period of six months by the MACT. The Civil Application is disposed of.

3 Needless to state that the withdrawal is subject to the result of the First Appeal.

[R.M. SAVANT, J]