IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3543 OF 2015
IN
FIRST APPEAL STAMP NO.12766 OF 2015

Smt. Yashoda Shekhar Shetty & ors. : Applicants.

In the matter between

National Insurance Co. Ltd. : Appellant
versus
Smt. Yashoda Shekhar Shetty and ors. : Respondents.

Mr. T J Mendon for the Applicants – original Respondent Nos.1 to 3.
Ms. Divya Menon i/by Mr. A S Vidyarthi for the original Appellant.

CORAM : R. M. SAVANT, J.
DATE : 10th August 2016

P.C.

1 The above Civil Application has been filed for withdrawal of the amount deposited by the Insurance Company i.e. The New India Assurance Co. Ltd in the MACT, Thane.

2 The The Applicants are the widow, the unmarried daughter and the son of the deceased one Shekhar Shetty who died in the accident in question. The MACT, Thane has awarded compensation to the tune of Rs.30,25,336/- with interest at the rate of 7.5% per annum from the date of the Application till realization.

3 In the above First Appeal the delay in filing the same has been condoned by an order passed today in Civil Application No.1710 of 2015. The above First Appeal has also been admitted. The Applicant No.1 is a housewife and the Applicant No.2 who is the daughter is 24 years and is of marriageable age. The Applicant No.3 who is the son is studying in an engineering college.

4 The Appellant – Insurance Company has challenged the award on the ground that the Insurance Policy did not cover the deceased who was travelling as an occupier in a private vehicle belonging to his company. Pertinently the said defence was not taken in the MACT, Thane however is sought to be taken in the above First Appeal for the first time in this Court. Prima facie there doesn't seem to be any merit in the said ground having regard to the judgment of a Division Bench of this Court reported in ***2010 ACJ 2477*** in the matter of ***Oriental Insurance Co. Ltd. v/s. Santosh Satish Kumar Garg and others***. However, it is clarified that this Court has not expressed any final opinion on the said aspect at this stage.

5 In my view, it would be just and proper to permit the Applicants to withdraw the amount of Rs.15,00,000/- with commensurate interest from the amount which has been deposited by the Insurance Company. Out of the amount which is allowed to be withdrawn the Applicant No.1 to invest an amount of Rs.2,00,000/- each in the names of the Applicant No.2 and the

Applicant No.3 in separate fixed deposits of a nationalized bank so that the same would fetch interest which would look after the needs of the Applicant Nos.2 and 3. In my view, the balance remaining would be a sufficient buffer for the Insurance Company if it ultimately succeeds in the above First Appeal. Needless to state that the withdrawal would be the subject to the result of the above First Appeal. The balance amount to be invested by the MACT, Thane in Fixed Deposit of a Nationalized Bank initially for a period of two years and thereafter to be renewed for appropriate periods as deemed fit. The above Civil Application is accordingly disposed of.

[R.M.SAVANT, J]