

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4646 OF 2016

ALONG WITH

CIVIL APPLICATION NO. 2641 OF 2016

IN

FIRST APPEAL (ST.) NO. 8633 OF 2016

Smt. Rupa Kumar Zagade & Ors. ...Applicants

In the matter between

The New India Assurance Co.Ltd. ...Appellant

Versus

Smt. Rupa Kumar Zagade & Ors. ...Respondents

Mr. Y.G. Thorat, i/b Mr. A.B. Tajane for the Applicants

Mr. Sudhakar Pandurang More, for the Appellant.

CORAM : G.S. KULKARNI, J.

DATE : 8th December 2016

ORDER :

1. Not on board. Taken on board on a praecipe as moved on behalf of the Applicants.

2. Heard Mr. Thorat, the learned Counsel for the

Respondents-claimants, Mr. More, for (original Appellant)-New India Assurance Company Limited for the sake of convenience parties are referred as they stated in the memo of appeal.

3. Civil Application No. 2641 of 2016 has been filed by the Appellant seeking stay of the execution of the judgment and award passed by the Tribunal. Civil Application No. 4646 of 2016 has been filed on behalf of the Respondents/original claimants seeking withdrawal of the award amount. Both these applications are heard together and hence this common order.

4. By Civil Application No.4646 of 2016, the Applicants / original claimants have prayed for withdrawal of the entire amount deposited by the Appellant Insurance Company before the Motor Accident Claims Tribunal in pursuance of the impugned judgment and award dated 8th October 2015 passed by the learned Member, MACT, Baramati in M.A.C.P. No. 334 of 2012. By the impugned order, the Tribunal has awarded compensation as under :-

“1) Claim petition is allowed with costs.

2) Respondents No. 1 and 2 by holding them jointly and severally liable are ordered to pay Rs. 19,04,215/-

towards compensation to claimants with interest at the rate of 9% per annum from the date of petition till realization (including N.P.L. amount).

- 3) On depositing of compensation amount, 50% amount be paid to claimant no. 1- Rupa Kumar Zagade by account payee cheque.*
- 4) Out of remaining compensation amount, 15% each be invested in any Nationalized Bank in the name of minor claimants No. 2 Nikhil Kumar Zagade and Claimant No. 3 Kum. Sarika Kumar Zagade, till they attain their age of majority.*
- 5) Out of remaining compensation amount, 10% each be paid to Claimant No. 4 Smt. Babai Lahu Zagade and Claimant No. 5 Lahu Laxman Zagade by account payee cheques.*
- 6) Award be drawn after deposit of deficit court fee, if any.”*

5. The contention as urged on behalf of the Respondent / claimant is that the Respondent No. 1 is the widow of the deceased who is required to settle all the needs of the family including of

Respondent Nos. 2 and 3, who are taking education. Respondents No. 2 and 3 are the children of the deceased aged 16 and 13. Respondent No. 5 is the father of the deceased, who is a senior citizen aged about 64 years. Respondent No. 4 is the mother of the deceased and is 59 years of age. The submission is that the withdrawal of the amount is necessary, as the Applicants require money for the day-to-day needs, education of the children, old age medical expenses of Respondent Nos. 4 and 5. These averments are made in paragraphs 7 and 8 of this Application. It is stated that the Appellant-Insurance Company has deposited an amount of Rs. 23,23,215/- and 1,18,460/- before the Tribunal on 27th July 2016. It is submitted that Respondents be permitted to withdraw the amount as prayed.

6. I have heard Mr. Thorat, the learned Counsel for the Applicants and Mr. More, the learned Counsel for the Appellant Insurance Company. I have also perused the impugned judgment and order passed by the learned Tribunal. Prima facie the only defence as urged on behalf of the Appellant Insurance Company before the Tribunal was that the deceased was negligent and rash in driving the motor cycle due to which the accident had taken place.

The Tribunal has disbelieved this defence of the Appellant on the ground that the road itself was not of such a nature to permit rush and negligent driving.

7. It is observed by the Tribunal that all the other requirements stand complied for the Respondents to grant legitimate compensation and accordingly awarded the same amount, considering the claim as made on behalf of the Respondents and more particularly, if the age of the deceased on the date of the accident was 36 years.

8. Having considered all these facts, in my opinion, the interest of justice would be served, if the Respondent No. 1 Rupa Zagade is permitted at this stage, to withdraw an amount of Rs. 10,00,000/-, and Respondents No. 4 and 5 (Smt. Babai Lahu Zagade and Shri Lahu Laxman Zagade) are jointly permitted to withdraw an amount of Rs. 5,00,000/- from the amount which is deposited by the Appellant Insurance Company with the Tribunal subject to the usual undertaking to be filed in this appeal within a period of two weeks. The balance amount as directed by the Tribunal shall be invested in a nationalised bank in the name of the minors namely Applicants No. 2 and 3 Nikhil and Sarika till they attain the age of majority and shall

be subject to the further orders to be passed in the appeal. Needless to observe that the Applicants No. 1, 2 and 3 are at liberty to make an Application for further withdrawal of the said amount, as and when one of the minors attain majority.

9. Accordingly, Civil Application No.4646 of 2016 is disposed of in above terms. No costs.

10. Civil Application No.2641 of 2016 would also not survive in view of the above order and the same stands disposed of.

[G.S. KULKARNI, J.]