IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4918 OF 2016
IN
FIRST APPEAL NO.304 OF 2001

Smt.Vidya Girish Mudabidri & Anr. ..Applicants

IN THE MATTER BETWEEN :

New India Assurance Co.Ltd. ..Appellant
V/s.
Smt.Vidya Girish Mudabidri & Ors. ..Respondents

Mr.Ketan Chothani i/by Mr.M.G. Barve for the applicants in C.A. No.4918 of 2016.
Mr.Sandeep S. Jiniswale for the Insurance Company.

CORAM : G.S. KULKARNI, J.

DATE : 21.12.2016

P.C.

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

2. By this application the applicant-original claimants (original respondent Nos.1 and 2) in the appeal, have prayed that they may be permitted to withdraw the balance amount of Rs.9 lakhs lying deposited in the above First Appeal without

security and unconditionally and for a direction to the Registry of this Court to encash the investment and pay to the applicants.

3. The first Appeal No.304 of 2001 was filed by the Insurance Company against the applicants challenging the judgment and award dated 05th December 2000 by the Chairman MACT, Mumbai. The applicant had also preferred a First Appeal against the same judgment and order being First Appeal No.1960 of 2009, seeking enhancement of compensation. Both these appeals were heard together and by a common judgment of this Court dated 30th June 2016 the appeal filed by the applicant was allowed, thereby enhancement of the compensation amount was granted to the applicants. The appeal filed by the Insurance Company was however, rejected.

4. The learned counsel for the applicant states that during the pendency of the appeal filed by the Insurance Company the amount as awarded by the Tribunal was deposited in this

Court. By interim order which was passed on 04th February 2016 applicants were permitted to withdraw 50% of the said deposited amount. It is submitted that in view of the appeal of the Insurance Company being dismissed, the applicant is entitled to withdraw the balance 50% amount lying deposited in this Court. The learned counsel for the applicant states that there is no embargo by the applicants to withdraw this amount. The Insurance Company has also not filed any proceedings before the Apex Court or any other proceedings aggrieved by this order. This statement is not disputed by the learned counsel appearing for the Insurance Company. It is however, stated that his clients are likely to take steps to file proceedings in this Court seeking review of the judgment and order dated 30th June 2016 passed by this Court. Considering the above circumstances, there is much substance in the contentions as urged on behalf of the applicants that the amounts be permitted to be withdrawn by the applicants. This for the reason that appeal filed by the Insurance Company has been rejected by this Court and in any event the applicants having succeeded in their appeal and enhancement granted by this

Court, it is all the more a reason that the applicants are permitted to withdraw the amount, as deposited by the Insurance Company during the pendency of the above appeal. Accordingly, the Civil Application is allowed in terms of prayer clause (a) and (b).

4. The office is directed to process the application of the applicant and permit the applicant to withdraw the amount which be completed within a period of two weeks from today. The Civil application is accordingly disposed of in the above terms. No order as to costs.

(G.S. KULKARNI, J.)