Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 786 OF 2015

WITH

CIVIL APPLICATION NO. 2818 OF 2016

The New India Assurance Co Ltd …Appellant
Versus
Kantilal Mishrilal Chhajed & Ors …Respondents

FIRST APPEAL NO. 787 OF 2015

WITH

CIVIL APPLICATION NO. 3622 OF 2016

The New India Assurance Co Ltd ...Appellant
Versus
Chhaya Mangalchand Mutha & Ors …Respondents

FIRST APPEAL NO. 788 OF 2015

WITH

CIVIL APPLICATION NO. 3764 OF 2016

The New India Assurance Co Ltd ...Appellant
Versus
Sunanda Prakash Samadadiya & Ors …Respondents

FIRST APPEAL NO. 793 OF 2015

WITH

CIVIL APPLICATION NO. 1777 OF 2017

The New India Assurance Co Ltd ...Appellant
Versus

Prakashchandra Mangolalji Samadadiya & Ors ...Respondents

Mr Misar, *for the Appellant in all FAs.*
Mr Sham Walve, *i/b Sham V Walve, for Respondents Nos. 1 & 2 in FA/786/1 and for the Applicant in CAF/2818/16.*
Ms Yogini Deshmukh, *for Respondent No. 1 in FA Nos. 787/15, 788/15, 793/15 and Applicant in CAF/3622/16, 3764/16 & 1777/17.*

CORAM: G.S. PATEL, J
DATED: 28th June 2017

PC:-

1. There is a group of Appeals arisen out of the same accident, though different claims were filed. This is because there were several parties injured. The First Appeals have already been admitted. The insurance company has deposited the various amounts awarded.

2. I am considering today the Civil Applications filed by various parties for withdrawal to the whole or part of the amount deposited.

3. The principal ground of challenge is that there was a breach of the policy because a vehicle meant for four was carrying 15 to 20 passengers. Ms Deshmukh points out that at least in two cases, the Trial Court directed the insurer to pay and recover, but in other cases made the award on a joint and several liability basis. It is her submission, one that is adopted by Mr Walve, that the correct approach would have been to direct the Insurance Company to pay and then to recover from its constituent, the insurer, the owner of the vehicle.

4. I do not think it is necessary to enter into controversy or discussion about the correctness of this principle. At least 50% of the amount should be allowed to be withdrawn in each of these cases. This cannot conceivably prejudice the Appellants.

5. In each of these cases, therefore, the Applicants are at liberty to withdraw 50% of the entire amount with proportionate interest without security or the furnishing of an undertaking. The MACT, Nashik will permit that withdrawal on production of an authenticated copy of this order.

6. The Civil Applications are disposed on in these terms. There will be no order as to costs.

7. In First Appeal No. 787 of 2015 (Claimant Chhaya Mutha), First Appeal No. 788 of 2015 (Claimant Sunanda Samdadiya) and First Appeal No. 793 of 2015 (Claimant Prakashchandra Samdadiya), there is apparently a short fall in the amount deposited. The Appellant is required to make up the deficit and deposit the balance with accrued interest by 28th July 2017. It is clarified that the order for withdrawal is in respect of 50% of the amount that should have been deposited (i.e., the entire amount awarded with up-to-date interest) and not the amount that was actually deposited.

(G. S. PATEL, J.)