IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1298 OF 2017
IN
FIRST APPEAL NO. 384 OF 2012

National Insurance Company Limited ...Appellants
Vs.
Mrs.Parul Raghuraj Ganiga & Ors. ...Respondents/Applicants

Mr.Sachin Tigde for Applicants.
Mr.Amol Gatne for Respondents.

CORAM : S.C. GUPTE, J.

4 MAY 2017

P.C. :

Heard learned Counsel for the parties.

2 This application is by the legal heirs of the deceased accident victim, who are Respondents to the present first appeal and who were applicants before the MACT, Thane in the impugned award, for withdrawal of compensation deposited by the Appellant insurer. The Appellant insurer basically presses three grounds. The first ground is that there is a difference between the name of the deceased in the FIR and the name of the deceased in respect of whom the application is filed. It is submitted that the FIR mentions name of the deceased as “Raghu Raj Shetty”, whereas the claim application mentions his name as “Raghu Raj Ganiga Mahalinga”. It is submitted that this defence has been raised in the written statement. The impugned award of the MACT, Thane, however, does no show that this defence was pressed before the trial court. Learned Counsel for the Appellant insurer submits that this defence was in fact pressed, but not

considered by the trial court. It is not permissible to go behind the impugned order of the Tribunal. If the defence was raised and yet not reflected in the impugned order, it was for the Appellant to have the matter mentioned for speaking to the minutes before the trial court and sought a suitable clarification in that behalf. The defence *prima facie* is clearly impermissible. It is, secondly, submitted by learned Counsel for the Appellant insurer that the driver of the vehicle, who was a proper party or who at least should have been examined as witness on the allegation of rash and negligent driving was neither joined as a proper party nor examined, and in the premises, no adverse finding on negligence can be made against his client. No such ground is reflected in the written statement filed by the Appellant insurer before the trial court. This ground thus also has no *prima facie* substance. The third contention of learned Counsel of the Appellant insurer is that the deceased cannot be said to be earning income of Rs.1,15,000/- as estimated by the Tribunal. Learned Counsel submits that it should have been less than Rupees One lakh. It is submitted that since the deceased was doing business, his income should have been considered by the court on the basis of average income and not income of any particular year. This ground merely reflects on the compensation determined by the Tribunal, claiming to reduce the same by a few percentage points.

3 The Applicants have set out various circumstances in which a withdrawal order is imperative. It is submitted that the deceased was the only bread-winner of the family. His widow, who started working after the demise of the accident victim, is barely managing to nourish her children. She has had to take loans from private parties and that she is even finding it difficult to pay the outstanding rent to the owner of the premises, where

she is residing.

4 In the premises, it is in the interest of justice that at least 50% of the compensation is allowed to be withdrawn by the Applicants. The civil application is, accordingly, disposed of by permitting the Applicants to withdraw a compensation of Rs.6,25,000/- from out of the compensation deposited by the Appellant insurer before the MACT, Thane. Learned Counsel for the Applicants undertakes to the court that in the event of the first appeal being decided against him, his clients shall return the amount of compensation withdrawn by them. The undertaking is accepted.

5 The rest of the amount deposited by the Appellant, if not already invested, to be invested in Fixed Deposit of a Nationalised Bank initially for a period of one year and thereafter to be renewed from time to time until further orders to be passed in the first appeal. The amount of Rs.25,000/- deposited by the Appellant insurer in this court as a precondition for filing of the appeal shall also be transferred to MACT, Thane for the purpose of this order.

6 Needless to add that the observations made in this order are for the purpose of determining the present application for withdrawal of compensation and shall not influence any order that may be passed in the first appeal.

7 The civil application is disposed of accordingly.

8 The first appeal to come up for admission on 13 June 2017.

(S.C. GUPTE, J.)