IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 546 OF 2017
IN
FIRST APPEAL NO. 13 OF 2017

The New India Assurance Co.Ltd. ...Appellant
Vs.
Smt.Varsha Ravindra Daithankar & Ors. ...Respondents/Applicants

Mr.D.S.Joshi for Appellants.
Mr.Y.P. Narvankar for Respondent Nos.1 to 5 / Applicants in CAF 546/2017.

CORAM : S.C. GUPTE, J.

4 MAY 2017

P.C. :

Heard learned Counsel for the parties.

2 This civil application taken out in a first appeal challenging an award of compensation passed by MACT, Pune in an accident claim petition. The civil application, which is filed by Respondent Nos.1 to 5 (original Applicants), seeks permission to withdraw the decretal amount deposited by the Appellant insurer before the trial court. The application is on the footing that the Applicants are in dire need of financial resources, both for medical and education purposes. In the present case, the victim had died in an accident, which took place on 9 February 2014. The Applicants are legal heirs of the deceased. Applicant No.1 is the widow, whereas Applicant Nos.2 and 3 are children of the deceased, who are aged, respectively, 19 and 17 years. Applicant Nos.4 and 5 are old parents of the

deceased, who are aged 82 and 87 years.

3 It is submitted that the deceased's parents require money for medical treatment particularly considering that Applicant No.5 has been suffering from ischemic heart disease and needs to be treated for instalment of cardiac pacemaker. It is also submitted that Applicant Nos.2 and 3 need urgent monetary help for educational purposes.

4 If one has regard to the grounds of challenge in the present first appeal, it is apparent that practically, the only viable defence, which the court may consider at the time of admission of the first appeal, concerns the quantum of compensation fixed by the Tribunal. It is the case of the Appellant insurer that based on Form 16, filed before the trial court, the net income could not have been treated as Rs.5,13,004/- per annum but had to be treated as Rs.4,65,559/- minus the tax components of Rs.16,795/-. Even if the Appellant insurer's ground is accepted in toto, its net impact on the compensation awarded by the Tribunal would only be reduction of the same by 20%. As far as 80% compensation is concerned, there is practically no viable defence. In the premises, it will be in the interest of justice to allow the original Applicants, at this stage, to avail of about 80% of the compensation awarded by the trial court. Such compensation comes to roughly about Rs.54 lakhs by way of principal amount. The interest on this principal amount may work out to about Rs.14 lakhs. In the premises, it will be in the interest of justice to allow the Respondent to avail of Rs.68 lakhs from out of the deposit made by the Appellant insurer towards the compensation awarded by the Tribunal. An appropriate allowance, however, will have to be made for the fixed deposits ordered by the Tribunal from out of the amount of compensation

to be paid by the Appellant insurer. As per the Tribunal's order, sums of Rs.5 lakhs have to be invested for three years in Fixed Deposits in the names of Applicant Nos.1 and 2. Compensation payable to Applicant No.3, on the other hand, was to be invested only till he attains majority. Since he has already attained majority, there is no need to invest any amount. As for Applicant Nos.4 and 5, considering their ages and needs, there is no point in investing the amounts. The amounts may instead be made over to them. None of the parties has any objection to this variation.

5 In the premises, the civil application is disposed of in terms of the following order :

(I) Out of the amount of compensation awarded by MACT, Pune, original Applicant No.1 shall be entitled to withdraw Rs.22.20 lakhs, whereas original Applicant Nos.2 and 3 shall be entitled to withdraw sums of Rs.8.60 lakhs and 13.60 lakhs, respectively;

(II) Original Applicant Nos.4 and 5 each shall be entitled to withdraw a sum of Rs.6.80 lakhs;

(III) Out of compensation deposited by the Appellant insurer, Rs.5 lakhs each shall be invested in Fixed Deposits in the names of original Applicant Nos.1 and 2 in any Nationalised Bank of their choice for a period of three years. Applicant Nos.1 and 2 shall be entitled to receive interest on their respective deposits from time to time;

(IV) The balance amount lying with MACT, Pune, shall be invested by the Registrar of that tribunal in Fixed Deposit of any Nationalised Bank initially for a period of one year and thereafter renewable from time to time until further orders in the first appeal.

(S.C. GUPTE, J.)