

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.2690 OF 2016
WITH
CIVIL APPLICATION NO.2691 OF 2016
IN
FIRST APPEAL (ST.) NO.5310 OF 2016**

The New India Assurance Co. Ltd.	...	Applicant
Versus		
Mr. Narendra Mahesh Sahani Majwal		
And Another	...	Respondents

**WITH
CIVIL APPLICATION NO.910 OF 2017
IN
FIRST APPEAL (ST.) NO.5310 OF 2016**

Mr. Narendra Mahesh Sahani Majwal	...	Applicant
Versus		
The New India Assurance Co. Ltd.	...	Respondent

Mr. D.R. Mahadik for the Applicant in Civil Application No.2690 of 2016.
Mr. S.S. Kothiya i/b Ramesh Chavanke for Respondent No.1/Applicant in
Civil Application No.910 of 2017.

CORAM : S.C.GUPTE, J.

DATE : 18 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2 Civil Application No.2690 of 2016 is taken out by the
Applicant/Appellant for condonation of delay of 221 days in filing the First

Appeal. The reasons for the delay stated in the Civil Application are that, the Appellant took some time to verify the driving licence of the driver of the insured vehicle through its Agra Divisional Office and thereafter had misplaced the certified copy of the judgment, and, accordingly, took time in coming before this Court.

3 Civil Application No.2690 of 2016 is allowed by condoning the delay, subject to payment of cost to Respondent No.1 (original applicant), which is quantified as Rs.25,000/-. This cost shall be paid by the Appellant to Respondent No.1 within a period of four weeks from today. Payment of cost to be condition precedent.

4 Civil Application No.2691 of 2016 is for stay of execution of the impugned award. It is submitted by learned Counsel for the Applicant/Appellant that the decretal amount alongwith interest has been already deposited by the Applicant/Appellant before the Motor Accident Claims Tribunal, Thane, and that, pending the hearing of the First Appeal, the execution of the impugned judgment and order be stayed. Respondent No.1, for his part, has taken out Civil Application No.910 of 2017 for permission to withdraw the compensation amount deposited by the Appellant before the Motor Accident Claims Tribunal, Thane.

5 The record of the case indicates that the objections raised by the Appellant in the First Appeal reflect merely on a part of the amount awarded by the Tribunal. The amount awarded by the Tribunal is *prima facie* fair and reasonable. The disability of the Applicant victim, which is estimated at 73.94%, has been treated as giving rise to a functional

disability to the extent of 50% and accordingly, from the monthly income of the Applicant of Rs.4,000/-, an allowance is made to the extent of Rs.2,000/-. Thus, taking into account the loss of income of Rs.2,000/- per month, i.e. Rs.24,000/- annually, and considering that the age of the Applicant at the time of the accident was 26 years, by adopting a multiplier 17, an aggregate compensation of Rs.4,08,000/- has been granted. Further an allowance is made for prospective future loss of income by adding an additional component of 50%. This may, at the most, be a bone of contention between the parties in the present First Appeal. In these facts, it is reasonable and fair and in the interest of justice to permit the original Applicant to withdraw a substantial part of the compensation deposited by the Appellant insurer before the Motor Accident Claims Tribunal, Thane.

6 Accordingly, there will be stay of execution of the impugned award of Motor Accident Claims Tribunal, Thane, until further orders. The original Applicant shall be entitled to withdraw a sum of Rs.6,00,000/- from out of the compensation deposited by the Appellant before the Motor Accident Claims Tribunal, Thane. The balance amount shall be invested by the Motor Accident Claims Tribunal, Thane, in fixed deposit of any Nationalized Bank for a period of two years and thereafter renewable from time to time till the disposal of the First Appeal. Civil Application No.910 of 2017 is disposed of accordingly.

7 Final orders in Civil Application No.2691 of 2016 will be passed when the First Appeal is heard for admission. The First Appeal to come up for admission in due course.

(S.C. GUPTE, J.)