

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1686 OF 2014
IN
FIRST APPEAL ST NO. 10841 of 2014

Reliance General Insurance Co Ltd	...Applicant
<i>Versus</i>	
Mayuri Mukund Lokhande & Ors	...Respondents

Mrs Kalpana R Trivedi, *for the Applicant.*
Mr TJ Mendon, *for Respondents Nos. 1 to 4.*
Mr SK Singh, *i/b AM Gokhale, for Respondent No. 5.*

CORAM: G.S. PATEL, J
DATED: 26th July 2017

PC:-

1. The entire amount has been deposited. There will, therefore, be a stay on execution.

2. The claimants have been permitted to withdraw an amount of Rs. 5,50,000/- out of the total amount awarded of Rs. 36,76,955/-. A slightly larger amount inclusive of interest has already been deposited.

3. Having regard to the fact that the claim is of 2007 decided in 2013 and that the private insurer has delayed filing of the appeal allegedly because it is very busy with office workload, transfer of officers and staff, consulting lawyers and so on, there must be a significant order of withdrawal.

4. While these may be reasons to condone the delay that cannot come at the cost of the applicants who are the widow, minor children and mother of the deceased who died on 5th January 2007 at the age of 37. He was a government employee. There is a challenge as to the computation of his income but that mostly relates to a deduction for tax. It is also contended that he was negligent because he swerved his motorcycle to avoid some battery parts that were lying on the road. Why anybody should reasonably expect battery pieces to be on a high speed highway such as the Mumbai-Goa Highway defies comprehension. I do not see what any motorcyclist or motorist could have done except his best to avoid those battery pieces. I will presume that the insurer in appeal is not suggesting that the motorcyclist should have stopped, collected the battery pieces, moved them safely to one side and only then continued on his way.

5. Having regard to all these, I will permit in addition to the previous order of withdrawal of Rs. 5,50,000/-, an additional amount of 60% of the amount awarded with apportioned accrued interest to be withdrawn without security or undertaking.

6. The remaining amount will be deposited in a fixed deposit with any nationalized bank. The statutory deposit amount of Rs. 25,000/- with all accrued interest is also to be transferred to the MACT within two weeks from today and shall be invested in the same manner.

7. The MACT will permit withdrawal on production of an authenticated copy of this order.

8. The civil application is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)