IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.827 OF 2016
WITH
CIVIL APPLICATION NO.828 OF 2016
WITH
CIVIL APPLICATION (ST.) NO.10695 OF 2017 (NOB)
IN
FIRST APPEAL (ST.) NO.6603 OF 2016

The New India Assurance Co. Ltd. … Applicant
Versus
Fakir Aabu Qureshi And Others … Respondents

WITH
CIVIL APPLICATION NO.1098 OF 2017
IN
FIRST APPEAL (ST.) NO.6603 OF 2016

Fakir Aabu Qureshi
since deceased through L Rs
And Others … Applicants
Versus
The New India Assurance Co. Ltd. … Respondent

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Mr. Sandeep S. Jinsiwale for the Applicant in Civil Application Nos.827 of 2016, 828 of 2016/Appellant.
Mr. Girish R. Agrawal for Respondent Nos.1 to 3/Applicant in Civil Application No.1098 of 2017.

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CORAM : S.C.GUPTE, J.

DATE : 18 APRIL 2017

P.C. :

. Original Applicant No.1, who is the father of the deceased victim, has expired. There is a civil application, being Civil Application (St.) No.10695 of 2017, taken out by the Appellants for bringing on record legal heirs of the deceased original Applicant. The legal heirs of the deceased are Respondent Nos.2 to 6, who are already on record. Accordingly, the civil application is disposed of by permitting the Appellant to delete the name of Respondent No.1 from the cause title of the First Appeal and pursuing the appeal against Respondent Nos.2 to 6 also in their capacity as legal heirs of deceased Respondent No.1.

2 This First Appeal challenges an award passed by the Motor Accident Claims Tribunal, Satara. Civil Application No.827 of 2016 is for the condonation of a delay of 43 days in filing the First Appeal. For the reasons stated in the civil application, the same is allowed by condoning the delay. Office shall now number the First Appeal and place the same for admission in due course.

3 Civil Application No.828 of 2016 is for stay of execution of the impugned order. The Appellant insurer has already deposited the entire decretal amount together with 9% interest as awarded by the Court before the Motor Accident Claims Tribunal, Satara. In the premises, there will be a stay of execution of the impugned award until further orders. This civil application will be finally disposed at the hearing the First Appeal for admission.

4 Civil Application No.1098 of 2017 is the Respondents' (original Applicants') application for withdrawal of deposit made by the Appellant insurer. The impugned award of the Motor Accident Claims Tribunal, Satara, grants a total compensation of Rs.25,85,000/- alongwith interest @ 9% per annum from the date of the application till payment or realization. The distribution of the amount of compensation and its payment/investment in fixed deposit is provided for in the impugned order. The impugned order requires the Appellant insurer to keep an amount of Rs.3,00,000/- each in fixed deposit in the name of Applicant Nos.4 to 6, all of whom are minors, in any Nationalized Bank till they attain majority. That accounts for Rs.9,00,000/-. Another sum of Rs.3,00,000/- is ordered to be kept in fixed deposit for five years in the name of Applicant No.3, who is the widow of the deceased accident victim. The amount of Rs.1,00,000/- is to be kept in fixed deposit for five years in the names of Respondent Nos.1 and 2 each, who are parents of the deceased. Applicant No.3 has been permitted to withdraw interest on the fixed deposits kept in the name of Applicant Nos.4 to 6. Out of the rest of the compensation, an amount of Rs.2,00,000/- each is to be paid to Applicant Nos.1 and 2 and the balance compensation was to be paid to Applicant No.3 widow. The only defence offered by the Appellant insurer to this award, is that the driver of the vehicle, which met with an accident, did not have a valid licence and that the Trial court has incorrectly awarded prospective future income at the rate of 50% in the present case despite the deceased being self-employed. It is submitted in the memo of appeal that the Trial Court failed to consider that the income of the deceased was merely a notional income; that the vehicle was used for the hire and reward and thereby there was a breach of the terms and conditions of the policy; and that the

future prospective income @50% could not have been awarded. As far as the ground that the vehicle was used for hire and reward is concerned, the onus was clearly on the Appellant insurer. *Prima facie*, it appears that this onus has not been discharged by the Appellant insurer by leading evidence. So also, addition of future prospective income of Rs.5,000/- per month, on the basis of notional income of Rs.10,000/-, appears to be *prima facie* just and proper. In the premises, it is in the interest of justice that pending the hearing of the First Appeal, the original Applicants are permitted to withdraw a substantial part of the amount deposited by the Appellant insurer towards the award of compensation.

5 Considering the operative part of the impugned order, and also taking into account interest payable by the Appellant insurer on the principal amount of compensation awarded, Civil Application No.1098 of 2017 is disposed of in terms of the following order :-

(i) Respondent No.3 will be entitled to withdraw a sum of Rs.7,00,000/- from out of the compensation deposited by the Appellant insurer with Motor Accident Claims Tribunal, Satara, without any security;

(ii) Respondent No.2 will be entitled to withdraw sum of Rs.1,50,000/- from out of the amount deposited by the Appellant insurer with Motor Accident Claims Tribunal, Satara, without any security;

(iii) Balance amount from out of the deposit made by the Appellant insurer shall be invested by the Registrar of Motor Accident Claims Tribunal, Satara, in fixed deposit/s of any Nationalized Bank for an initial period of two years with interest payable quarterly. The interest to be credited to the account of the Registrar of Motor Accident Claims Tribunal, Satara, shall be made over to Respondent No.3 without any security;

(iv) The parties to act on the authenticated copy of this order.

(S.C. GUPTE, J.)