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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1785 OF 2017

IN

FIRST APPEAL ST NO. 11392 OF 2017

New India Assurance Co Ltd ...Appellant

Versus

Smt Vrushali Ram Dalvi & Ors ...Respondents

Ms Minal Chandnani, *i/b JS Chandnani, for the Appellant.*
Mr TJ Mendon, *for Respondent Nos. 1 and 2.*

CORAM: G.S. PATEL, J
DATED: 6th July 2017

PC:-

1. The learned Advocate for the Appellant states that an amount of approximately Rs 32 lakhs was deposited yesterday with the District Court at Raigad. Mr Mendon appears on a caveat. In view of the deposit, there will be a stay on execution.

2. Mr Mendon requests that an order may be made for withdrawal.

3. The claim arose out of a fatal accident. The husband of the 1st Claimant passed away. The 2nd Claimant is their daughter. The total amount awarded was Rs. 32,49,152/- with interest at 8% per annum. The accident took place on 15th April 2012 when the driver of Jeep No. MH-08-J-7841 on the Mumbai-Goa Highway crashed into a Maruti Alto No. MH-03-AM-8346 causing the death of Ram Sadashiv Dalvi, the deceased, a passenger in the Alto. The argument on behalf of the Appellant is that the vehicle in which the deceased was travelling was over capacity. It is also argued that it is unproven that the driver of the Maruti Alto had a valid license. There is a challenge to the computation of income and accounting for future prospects. At best, the point of substance may be the question of over-crowding of the Maruti Alto. This actually translates to a question of contributory or composite negligence. It cannot be used to absolve the insurer of the Jeep altogether. It is also contended that the driver of the Jeep was not a party to the proceedings.

4. It will be appropriate to allow the Respondents/original Claimants Nos. 1 and 2 to withdraw an amount of Rs. 15 lakhs for the present without undertaking or security. An amount of Rs. 5 lakh will be kept aside for Applicant No. 2, the minor, and invested in a fixed deposit with any nationalized bank till she attains the age of majority. A copy of that fixed deposit receipt will be kept with the Motor Accident Claims Tribunal.

5. The Motor Accident Claims Tribunal will permit withdrawal on production of an authenticated copy of this order.

6. The remaining amount is to be invested by the Motor Accident Claims Tribunal in a fixed deposit with any nationalized bank.

7. The statutory deposit of Rs. 25,000/- is to be transferred to the Motor Accident Claims Tribunal and similarly invested.

8. The Civil Application is disposed of in these terms. No costs.

(G. S. PATEL, J)