IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2683 OF 2016
IN
FIRST APPEAL (STAMP) NO.16005 OF 2016
WITH
CIVIL APPLICATION NO.2684 OF 2016
IN
FIRST APPEAL (STAMP) NO.16005 OF 2016

Shriram General Insurance Company Ltd. …Applicant/Appellant
vs.
Smt. Sojar Krishnat Kumbhar And Ors. …Respondents

…….

Mr. Nikhil Mehta, i/b. KMC Legal Venture, for the Applicant.

Mr. R.S. Alange, for Respondent Nos. 1 to 3.

…….

CORAM : S.C. GUPTE, J.

DATED : 2 MAY 2017

P.C. :

. Civil Application No.2683 of 2016 is for condonation of a delay of 60 days (according to the office, 83 days). 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.

2. Civil Application No.2684 of 2016 is for stay of execution of the impugned award. Learned Counsel for the Applicant/Appellant submits that the Applicant/Appellant has deposited the entire decretal amount along with interest aggregating to Rs.8,28,000/- before the Trial

Court and prays for stay of execution of the impugned award against such deposit.

3. Considering the fact that, in the present case, the deceased accident victim, who was said to be working as a labourer with the owner of the tempo, which met with the accident, died on the spot and also considering that it been accepted by the MACT, Solapur that the cause of the death was a result of the offending vehicle being driven in a rash and negligent manner by the tempo driver, as a condition of this stay, it is in the interest of justice to consider the application of legal heirs of the accident victim for withdrawal of at least a part of the compensation deposited by the Appellant Insurer in Court. If one has regard to the grounds of challenge, it may be seen that one of the important grounds is that the deceased accident victim was travelling as a gratuitous passenger in a goods carrying vehicle. Learned Counsel for the Appellant Insurer has, in this behalf, referred to the judgment of the Supreme Court in the case of **National Insurance Co. Ltd. vs. Balkrishnan**[1]. It is submitted that the owner of the goods, which meant only the person travelling in the cabin of a goods carrier, alone is covered in a comprehensive policy. In the present case, the deceased accident victim was, however, held to be a representative of the owner of the goods and was travelling in the tempo along with the goods. It is to be noticed that the policy in the present case was a comprehensive or package policy excluding liability only in respect of death or bodily injury to a person, who is not an employee of the Insured or being carried for hire or reward other than owner of goods or representative of the owner of goods being carried in or upon or entering or mounting or alighting

1 (2013) 1 Supreme Court Cases 731

from the insured vehicle described in the Schedule of the Policy. The description 'representative of the owner of goods carried in or upon the insured vehicle' would *prima facie* include the deceased accident victim, making the insurance company liable. Apart from this ground, there is merely a challenge to the quantum of compensation determined by the Trial Court. On these facts, it is in the interest of justice that the legal heirs of the accident victim are permitted to withdraw about 50% of the compensation deposited by the Appellant Insurer. In the premises, Civil Application No.2684 of 2016 is disposed of in the following terms:

(i) The execution of the impugned award of MACT, Solapur is stayed, pending the hearing and final disposal of the First appeal;

(ii) Respondent Nos.1 to 3 (Original Applicants) are permitted to withdraw a sum of Rs.4 lakhs from out of the deposit made by the Appellant Insurer towards the compensation awarded by the Tribunal;

(iii) The appeal to come up for admission on 19 June 2017.

(S.C. GUPTE, J.)