Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.652 OF 2014

WITH

CIVIL APPLICATION NO.4414 OF 2013

WITH

CIVIL APPLICATION NO.1561 OF 2017

United India Insurance Co Ltd ...Appellant

Versus

Anant Dattatraya Patil & Anr ...Respondents

WITH

CIVIL APPLICATION NO.1150 OF 2014

WITH

CIVIL APPLICATION NO.1151 OF 2014

IN

FIRST APPEAL (STM) NO.25209 OF 2013

United India Insurance Co Ltd ...Appellant

Versus

Lumanjudevi Sunil Viswakarma alias Sharma & Ors ...Respondents

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Mr R Mehta, *i/b KMC Legal Venture, for the Appellant in both Appeals.*

Mr Sanjay Ghaisas, *for the Respondents and for the Applicant in CAF No.1561 of 2017*

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

PC:-

1. Both Appeals are admitted. By consent, paper books and R&P are dispensed with, as parties agree they can proceed on the filings as they stand. Accordingly, both Appeals are, by consent, taken up forthwith for hearing and final disposal.

2. The Insurance Company is the Appellant. There is a common order. It arises out of the same accident. In First Appeal No.652 of 2014, an amount of Rs.86,600/- and further interest has been awarded towards compensation for a disability suffered. In First Appeal (STM) No.25209 of 2013 an amount of Rs.5,72,000/- has been awarded as a compensation for the fatality involved in that case with interest at 6% per annum. The Insurance Company has deposited the entire amount with interest. It has also deposited the statutory amount of Rs.25,000/- in this Court.

3. Before the Motor Accident Claims Tribunal (**"MACT"**) Alibag, the insured person (1st Respondent/1st non-applicant in the Claim Application) did not appear and allowed the matter to proceed undefended against him. Yet, the MACT did not consider the application of the Insurance Company to pass an order of payment and recovery, even though the Insurance Company contended that the vehicle was being used in the breach of the terms of the insurance policy by carrying more than the permissible number of persons.

4. In my view, both Appeals can be disposed of by modifying the order of the MACT to the limited extent of permitting the Insurance Company/Appellant to prosecute its claim for recovery against the 1st Respondent/1st Non-Applicant to the original claim, (viz., the insured) in the execution proceedings before the Trial Court or in such other manner as the Appellant thinks proper. The original Claimants in both matters are at liberty to withdraw the respective amounts deposited as aforesaid with the accrued interest. The amount of Rs.25,000/- deposited in this Court is to be transferred to the MACT and the original Claimants are at liberty to withdraw that amount.

5. The Appeals are disposed of in these terms.

6. In view of disposal of the Appeals, the Civil Applications do not survive and are disposed of accordingly.

(G. S. PATEL, J.)