

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2626 OF 2016
IN
FIRST APPEAL ST NO. 10193 OF 2016
WITH
CIVIL APPLICATION NO. 2627 OF 2016

The New India Assurance Co Ltd, through ...Appellant
Centralized Motor TP Claims HUB
Versus
Vijayamala Namdeo Parab & Ors ...Respondents

AND
CIVIL APPLICATION NO. 719 OF 2017
IN
FIRST APPEAL ST NO. 10193 OF 2016

Vijayamala Namdeo Parab & Ors ...Applicant
Versus
The New India Assurance Co Ltd ...Respondents

Mr DS Joshi, *for the Appellant/Applicant.*
Mr Ramesh Chavanke, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 14th June 2017

PC:-

Civil Application No. 2626 of 2016:

1. There has been a considerable delay of one and a half years in filing the Appeal. Mr Joshi states that throughout the impugned Award the name of the Appellant was wrongly shown at first although the Appellant was correctly impleaded. The Award dated 6th September 2014 was amended to show the Appellant's correct name only on 16th February 2015.

2. The learned Advocate for the Respondents submits that there is nonetheless a considerable delay. I have to bear in mind that this is a First Appeal. Having regard to the circumstances and the amount of delay, the Appellant may be put to terms and Mr Joshi with his usual fairness readily agrees to pay costs quantified at Rs. 10,000/-. The amount of costs will be paid directly to the learned Advocate for the Respondents Nos. 1 and 2 within two weeks from today.

3. Subject to payment of costs, Civil Application No. 2626 of 2016 is made absolute.

Civil Application No. 719 of 2017

4. The amount awarded is Rs. 52,27,776/- and interest. Mr Joshi states that this is being a fatal accident case, the entire amount of Award has been deposited. The Applicants/Respondents have filed

this Civil Application seeking withdrawal of the amount lying deposited which is Rs. 83,83,319/- as on 23rd August 2016.

5. The Appeal is mounted on the ground of contributory negligence of the deceased. In fact, the plea is that the deceased was solely responsible in rashly driving his motorcycle. The second challenge is on the ground of quantum. The Applicants are the mother and sister of the deceased. The order indicates that he was 28 years old at that time and was permanently employed in a software company. The salary taken for the purposes of computation has been rounded to Rs. 25,244/- per month. Any plea for enhancement will be decided at a later date. All contentions are left open.

6. For the present, I am concerned with an application for withdrawal. I will allow the withdrawal of Rs. 50,00,000/-, to be divided equally between Respondents Nos. 1 and 2.

7. Civil Application No. 719 of 2017 is made absolute in these terms.

First Appeal St No. 10193 of 2016:

8. Parties are agreed that the matter may be disposed of on the basis of the compilation filed by Respondents Nos. 1 and 2. If there are any further documents required, Mr Joshi will file a separate compilation and serve it on the Advocates for Respondents well in advance.

9. List the First Appeal for hearing and final disposal, high on the final hearing board on 20th July 2017. The Respondents waive service.
10. In the meantime, further execution proceedings are stayed.

(G. S. PATEL, J)