Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.407 OF 2017

IN

FIRST APPEAL (ST) NO.7538 OF 2016

Pratibha Prakash Jadhav & Ors …Applicants
Versus
Bajaj Allianz General Insurance Co Ltd …Respondent

Mr Ajit Kenjale, *with Akshay Kamble, Sohil Gulabani & Kaustubh Kundpile, for Applicants Nos.1, 2 & 3.*
Ms Yogini Deshpande, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 4th July 2017

PC:-

1. This Civil Application is filed by the Claimant for withdrawal of the amount of Rs.64,54,845/- deposited with the Motor Accident Claims Tribunal (**"MACT"**), Satara, by the Appellant-Insurer.

2. The claim was initially made by the deceased himself. He was at first disabled in the vehicular accident. Some time later, after the claim was filed, he died. The claim therefore proceeded on the basis of it being a fatal accident. The amount awarded was Rs.44,05,679/- with interest.

3. The date of accident was 30th November 2008. The victim died on 8th October 2011, about three years later. The material before the MACT shows that while the claimant, a medical practitioner, was undergoing treatment for injuries suffered in the accident, it was found that his right leg was affected by cancer. This was detected apparently very late and by then the cancer had spread to the rest of the body.

4. Ms Deshmukh argues that it is difficult in these circumstances to say that the death was a proximate cause of the accident or that there is any causal connection between the accident and the death. She therefore resists the application for withdrawal of the entire amount. In my view, there is substance to what is contended by the insurer at least in regard to the withdrawal of the entire amount. In paragraph 7 of the impugned order the learned Judge observed that because both legs were damaged and the cancer in the right leg was then discovered during treatment, causality between the accident and the death is established. This needs a more detailed examination at the final hearing stage. Equally, none of this means there should be no withdrawal allowed at all. After all, it is common ground that the deceased Applicant did in fact suffer injuries as a result of the accident.

5. I will permit a withdrawal of Rs.35,00,000/- and proportionate accrued interest on that amount for the present. The

MACT will permit withdrawal of this amount and pro rata interest. It will pass the necessary orders on production of an authenticated copy of this order. If not already done (i) the remaining amount is to be invested in a fixed deposit with a nationalised bank, if not already done; and (ii) the statutory deposit of Rs.25,000 to be transferred to the MACT and invested there.

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

(G. S. PATEL, J.)