

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.566 OF 2016
WITH
CIVIL APPLICATION NO.567 OF 2016
IN
FIRST APPEAL (ST.) NO.35752 OF 2015**

The New India Assurance Co. Ltd. ... Applicant
Versus
Mr. Abdul Salam Abubakar Shaikh
And Others ... Respondents

**WITH
CIVIL APPLICATION NO.107 OF 2017
IN
FIRST APPEAL (ST.) NO.35752 OF 2015**

Mr. Abdul Salam Abubakar Shaikh
And Others ... Applicants
Versus
The New India Assurance Co. Ltd. ... Respondent

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Mr. D.R. Mahadik for the Applicant in Civil Application Nos.566 of 2016 and 567 of 2016 and Respondent in Civil Application No.107 of 2017.
Mr. V.M. Parkar for the Applicants in Civil Application No.107 of 2017 and Respondents in Civil Application Nos.566 of 2016 and 567 of 2017.

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CORAM : S.C. GUPTE, J.

DATE : 24 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2 Civil Application No.566 of 2016 seeks condonation of a delay of 148 days in filing the First Appeal. For the reasons stated in the civil application, the civil application is allowed by condoning the delay.

3 Civil Application No.567 of 2016 for stay of the impugned award passed by Motor Accident Claims Tribunal, Thane. Learned Counsel for the Appellant states that the decretal amount alongwith upto date interest has been deposited by it before MACT, Thane. Learned Counsel prays for stay of execution of the impugned award against such deposit. On this application, the execution of the impugned award is stayed pending the First Appeal, subject to the Applicant/Appellant depositing the entire decretal amount with upto date interest before M.A.C.T., Thane, within four weeks from today. The civil application is disposed of.

4 Civil Application No.107 of 2017 is by the Respondents to the First Appeal, who are the original Applicants before MACT, Thane. The claim petition before MACT, Thane, was filed by the Applicants as legal heirs of the deceased accident victim. There is practically no dispute that the deceased died in a motor accident, which took place during the subsistence of insurance policy and due to rash and negligent driving of the truck insured under the policy. The only dispute raised in the First Appeal pertains to the quantum of compensation awarded by the claim tribunal. It is submitted that deceased being a bachelor, instead of 2/3rd income being computed towards compensation to the legal heirs, only one half of income should have been computed and secondly, multiplier of 15 on the basis of age of the deceased was an error, since ages of the Applicant parents had to be considered. These grounds of challenge reflect merely on the quantum

to be awarded. In the premises, considering the facts and circumstances of the case and material before the Court, it is in the interest of justice that the original Applicants be permitted to withdraw a sum of Rs.7,50,000/- without any security from out of the amount of compensation deposited by the Appellant insurer before MACT, Thane. The civil application is disposed of.

(S.C. GUPTE, J.)