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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (St.) No. 853 OF 2017
WITH
CIVIL APPLICATION No. 2042 OF 2017
WITH
CIVIL APPLICATION No. 1332 OF 2018
WITH
CIVIL APPLICATION No. 2043 OF 2017

Iffco Tokio General Insurance Co. Ltd. ... Appellant
Vs.
Akash Balu Aher & Anr. ... Respondents

Ms. Varsha Chavan, for the Appellant, for Applicant in CAF. 2042/2017 & CAF. 2043/2017, and for Respondent in CAF. 1332/2018.

Ms. Sangeeta S. Salvi, for the Respondent No. 1 in the appeal & CAF. 2042/2017 & CAF. 2043/2017 and for Applicant in CAF. 1332/2018.

CORAM : V. M. DESHPANDE, J.

DATE : JUNE 20, 2018

PC :-

Civil Application No.2042 of 2017

This is application for condonation of delay of 3 days in filing appeal. Heard the learned counsel for the parties. Learned counsel for the non-applicant/claimant strongly opposed this application. However, after hearing both the learned counsel and after

having gone through the contents of the application, application is allowed. Delay in filing the appeal is hereby condoned. Office to register the appeal.

First Appeal (St) No.853 of 2017

1. **Admit.** Learned counsel waives service for the Respondent No.1. Call for Record and Proceedings.

Civil Application No. 1332/2018

2. This is application for withdrawal of the amount deposited by Insurance Company. Heard learned counsel for the parties. The appeal is filed against the judgment and order in Motor Accident Claim Petition No.136 of 2014 dated 31/8/2016. The petition filed on behalf of the claimant/applicant for compensation under section 166 was allowed and the opponents therein including the insurance company was directed to pay Rs.8,90,000/- including no fault liability compensation with interest @ 8% p.a.

3. It is not in dispute that applicant's mother Surubai Balu Aher has died in the accident. In that view of the matter, in the interest of justice this application is required to be allowed in part. According, I pass following order:

ORDER

i) Application is allowed in part;

- ii) Applicant/claimant is entitled to withdraw 50% of the amount deposited by the insurance company on he giving an undertaking at the time of withdrawal that in case judgment goes against him he shall refund the amount with interest which will be calculated at that time;
- iii) Applicant will be at liberty to file appropriate application, if occasion arise by pointing out the necessity for withdrawal of the further amount;
- iv) The Motor Accident Claims Tribunal, Thane shall invest the remaining amount with any nationalized bank in Fixed Deposit Receipt initially for a period of 3 years and thereafter it shall be renewed year after year to save the loss of interest;
- v) The statutory amount of Rs.25,000/- which is deposited at the time of filing of the appeal shall also be invested by the Registry in the Fixed Deposit Receipt with any Nationalized Bank to save loss of interest;
- vi) Application is disposed of with no costs.

Civil Application No.2043 of 2017

4. This application is for stay. Heard learned counsel for the appellant and claimant. Appeal is filed against the judgment and award passed in Motor Accident Claim No.136 of 2014 passed by MACT, Thane. There is delay of 3 days. This Court has already condoned the delay and has admitted the appeal and also application for withdrawal of the amount filed by claimant is allowed in part. The appellants have already deposited entire amount. In that view of

the matter there shall be stay to the execution and operation of the judgment and award passed in Motor Accident Claim No.136/2014. Application is allowed and disposed of.

Sd/-
[V. M. DESHPANDE, J.]