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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 2472 OF 2017
IN
FIRST APPEAL (St.) No. 2435 OF 2017
WITH
CIVIL APPLICATION No. 879 OF 2018
WITH
CIVIL APPLICATION No. 2473 OF 2017

Brihan Mumbai Mahanagar Palika … Appellant
Vs.
Smt. Kirti Kamlakar Sawant & Ors. … Respondents

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Ms. Varsha Chavan, for Applicant in CAF. 879/2018, for Respondent Nos. 1 to 3 in FAST. 2435/2017, CAF. 2472/2017, CAF. 2473/2017.

Mr. Madhukar Kalzunkar a/w Mrs. Karishma Jhaveri I/b Navdeep Vora & Associates, for the Appellant in FAST. 2435/2017, for Applicant in CAF. 2472/2017, CAF. 2473/2017, and for the Respondent in CAF. 879/2018.

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CORAM : V. M. DESHPANDE, J.

DATE : JULY 18, 2018

PC :-

CIVIL APPLICATION No. 2472 OF 2017

1. This is an application filed by the Brihan Mumbai Mahanagar Palika for condoning the delay caused in lodging the

first appeal, challenging judgment and award dated 1.8.2016 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in MACT Application No. 1283 of 2011. Learned counsel Ms. Varsha Chavan waives service of notice for Respondent No. 1 to 3. For the reasons stated in the application, the delay is condoned. Application is accordingly allowed and disposed of. Office to register the appeal after removal of office objections by the Appellant.

FIRST APPEAL (St.) No. 2435 OF 2017

2. Heard the learned counsel for the Appellant. **Admit.** Learned counsel Ms. Varsha Chavan waives service of notice for Respondent Nos. 1 to 3. Call for records and proceedings.

CIVIL APPLICATION No. 879 OF 2018

3. This is an application filed by the original claimants, who are - widow (Applicant No.1), and son (Applicant No.2), daughter (Applicant No. 3) of the deceased Kamlakar Sawant, for withdrawal of the amount of compensation deposited by the Brihan Mumbai Mahanagar Palika before the court below. The

learned court below vide impugned judgment and award dated 1.18.2016 passed in MACP Application No. 1283 of 2011 has directed the Respondent Brihanmumbai Mahanagar Palika to pay Rs. 29,54,000/- to the claimants including the amount of "no fault liability" alongwith interest @ 9% p.a.. Directions of apportionment were also given in the said order. The learned counsel for the Applicant has made a solemn statement that the insurance company has deposited the entire compensation amount in the lower court.

4. After hearing the learned counsel for the Applicants / original claimants and the learned counsel for the Brihan Mumbai Mahanagar Palika, in the interest of justice, I pass the following order:

(i) The Applicants are entitled to withdraw 50% of the amount deposited by the Brihan Mumbai Mahanagar Palika in the lower court, alongwith the accrued interest, as per the apportionment made by the learned Tribunal in the impugned judgment and award.

(ii) Office is directed to transfer statutory deposit made by the Appellant in this Court at the time of lodging the appeal to the learned court below.

(iii) The remaining 50% of the amount together with statutory deposit shall be invested by the court below in any nationalised bank, initially for a period of 3 years and renew the same as and when occasion arises.

(iv) Civil Application No. 879 of 2018 is accordingly partly allowed and disposed of in the aforesaid terms.

CIVIL APPLICATION No. 2473 OF 2017

5. This is an application filed by the Brihan Mumbai Mahanagar Palika for stay to the impugned judgment and award of the learned Tribunal. Heard the learned counsel for the Brihan Mumbai Mahanagar Palika and the original claimants. Today, this Court has admitted the appeal filed on behalf of the Brihan Mumbai Mahanagar Palika, as also allowed the original claimants to withdraw 50% of the compensation deposited by the Appellant, as indicated in the order. In that view of the

matter, pending the hearing and disposal of the appeal, there shall be stay in respect of 50% of the compensation awarded vide impugned judgment and award, dated 1.8.2016 passed in MACT Application No. 1283 of 2011 by the learned Tribunal at Mumbai, which the trial court will be investing in the nationalised bank.

6. Civil Application No. 2473 of 2017 is disposed of in the aforesaid terms.

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

Vinayak Halemath