IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.984 OF 2018
IN
FIRST APPEAL NO.346 OF 2018

ICICI Lombard General Insurance Company Ltd. … Applicant

V/s.

Dhaval Bharat Patel and Anr. … Respondents

Smt.Varsha Chavan for the appellant

Mr.Baldev H. Bhalwal for the respondent no.1

CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.

DATED : MARCH 20, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 By this Civil Application, Applicant Insurance Company is seeking stay of the operation and implementation of the judgment and award dated 19.12.2017 passed by MACT, Mumbai in MACP Application No.2602 of 2010 by which the Tribunal held that Applicant is liable to pay sum of Rs.38,89,500/- with 7.5% interest from the date of Application till realisation to the Respondent Claimant.

3 The learned counsel for the Claimant submits that if entire amount is recovered by the Respondent Claimant by preferring the Execution Application then nothing will survive in the present proceedings. She submits that Applicant has good chance of success in the present proceedings. She submits that cheque dated 18.02.2008 issued by the Respondent no.2 towards Insurance Premium was dishonoured. Therefore, there is no question of holding that the Applicants are liable to pay compensation. She further submits that in any case compensation awarded by the Tribunal is on higher side. Hence, in the interest of Justice this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award till the hearing and final disposal of the present First Appeal.

4 On the other hand, the learned counsel for the Respondents no.1 Claimant no.1 vehemently opposed the present Civil Application. He submits that the Tribunal rightly held that Applicant is liable to pay compensation to the Respondent no.1 original Claimant no.1. He further submits that applicants made incorrect statement in the written statement filed by them in Tribunal. He submits that Applicant issued a policy bearing no.3008/53732299/00/000. In support of this contention, he relies on Exhibit-104 i.e. Certificate cum Policy Schedule issued by the Applicant. Inspite of these facts, Applicant in their written statement denied these facts. The said paragraph of written statement reads thus:

> *"Thus, it is submitted that insurer has not received the premium amount towards insurance of the vehicle bearing No.MH-04-DK-7045 and hence, are not liable to indemnify the*

> *opposite party herein. The cover note bearing No.53732299 is cancelled by the insurer and all the concerned parties have been informed of the same. Since the contract of insurance is cancelled, the insurer is not liable to indemnify the opposite party herein. It is submitted that there is no contract between the opposite party and the insurer herein as the contract is terminated ab initio."*

5 The learned counsel for the Respondent no.1 Claimant no.1 submits that in view of incorrect statement made by the Applicant in written statement they are not entitled to any relief in the present Civil Application. He further submits that in any case in an accident which occurred on 26.12.2008 Respondent no.1 Claimant no.1 sustained 100% disability. Hence, Applicant may be directed to deposit entire awarded amount and allow Respondent no.1 to withdraw the same without furnishing any security. He also relies on the judgement of the Apex Court in the matter of ***New India Assurance Co.Ltd. v. Kiran Singh and Others, 2004 ACJ 1176***. Paragraph 6 of the said judgment reads thus:

> *"6. Insurance is a covenant of good faith, where both parties are covenanted to abide by the terms and conditions of the policy. In the premises aforesaid, it is clear that the company has made a deliberate attempt to escape the liability by introducing a copy of the policy other than the insured. Often, the terms and conditions are being respected more in breach than observance. Insurance company must bear in mind that they are the trustee of the public. Keeper of the public coffer. Often, even genuine claims are being hotly contested in a routine manner by dragging the parties to courts, wasting enormous time and money for the claimants to get their claims settled. The Act like Motor Vehicles Act being a beneficial legislation aimed at quick redressal of the*

> *victims of accident arising out of the use of motor vehicles, the attitude routinely adopted by the insurance company would render the object of the Act frustrated. If such instances are brought to the court, the court would be obliged to dismiss the appeal with heavy costs, apart from deprecating such practices."*

6 We have heard both the sides.

7 It is to be noted that in any case, money decree is passed against the Applicant. Whether the Applicant is liable to pay compensation or not that is to be decided at the time of final hearing.

8 During the pendency of the present First Appeal, Applicant have to deposit entire awarded amount in Tribunal.

9 Registry is directed to transfer sum of Rs.25,000/- with interest if any, which was deposited by the applicant at the time of filing of First Appeal, to the Tribunal in the account of M.A.C.P. No. 2602 of 2010, MACT, Mumbai immediately.

10 Considering the injury sustained by the Claimant no.1, we are of the opinion that Claimant no.1 may be permitted to withdraw entire amount on some condition. Hence, following order is passed:

a) The operation and implementation of the impugned judgment and award dated 19.12.2017 passed by MACT, Mumbai in Application No.2602 of 2010 is stayed, till hearing and final disposal of the appeal on condition that the Applicant Insurance Company to deposit the entire awarded amount with interest, cost, if any, in the Tribunal within 3 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

b) If amount is not deposited within stipulated time as stated hereinabove, Respondent no.1 Claimant no.1 is entitled to execute the award according to law.

c) If amount is deposited within stipulated time as stated hereinabove, Respondent no.1 Claimant no.1, Dhaval Bharat Patel is entitled to withdraw 50% amount without furnishing any security with an undertaking that in case this court calls upon them to deposit the amount he will do so within particular time. Remaining 50% be withdrawn by furnishing solvent security to the satisfaction of the Tribunal.

d) If amount is not withdrawn within 3 months from the date of deposit, Tribunal is directed invest entire amount in Fixed deposits of any Nationalised Bank, initially for the period of one year and same to be continued till hearing and final disposal of the First Appeal.

e) The Registry of this Court is directed to transfer the amount of Rs.25,000/- with interest if any, which was deposited by the applicant at the time of filing of First

Appeal, to the M.A.C.T. Mumbai in the account of M.A.C.P. No.2602 of 2010.

f) Civil application stands disposed of accordingly.

(B. P. COLABAWALLA, J.) **(K.K. TATED, J.)**