

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL (STAMP) NO.11904 OF 2017****WITH****CIVIL APPLICATION NO.3321 OF 2017**

The New India Assurance Co Ltd.

..Appellant

vs.

Shri Javed Abdul Gani Maniyar and Anr.

...Respondents

FIRST APPEAL (STAMP) NO.11904 OF 2017**WITH****CIVIL APPLICATION NO.2186 OF 2018**

Shri Javed Abdul Gani Maniyar and Anr.

...Appellants

vs.

The New India Assurance Co Ltd.

..Respondent

Mr.Sudhakar Pandaram i/b Mr. Milind V. More for Appellant in FA(ST) No.11904/2017 and for applicant in CAF No.3321/2017 and for Respondent in CAF No.2186/2018.

Mr. S. P. Rajepandhare for the Applicant in CAF No.2186/2018 and for Respondent No.1 in FA(ST) No.11904/2017 and CAF No.3321/2017.

CORAM : V. M. DESHPANDE, J.**DATE : 2nd JULY, 2018****P.C.:****CIVIL APPLICATION NO.2186 OF 2018**

2. This application is for condonation of delay. Heard learned counsel for the parties. There is delay in lodging the appeal. Though the learned counsel for the respondent vehemently opposed the application, for the reasons stated in the application, application is allowed. Delay is condoned. Office is directed to register the appeal.

FIRST APPEAL (STAMP) NO.11904 OF 2017

. Heard learned counsel for the parties. Issue notice to Respondent No.2 returnable on 13/8/2018. The record shows that first appeal is not registered since the appellant has not removed office objections. Six weeks time granted to the appellant to remove office objections failing which first appeal shall stand dismissed automatically without back reference to the Court.

CIVIL APPLICATION NO.3321 OF 2017

3. Heard learned counsel for the parties. This is application for withdrawal of the amount. Learned Member of MACT on 2/8/2016 has passed judgment and award in Claim Petition No.229/2012 by which opponents therein were directed to pay compensation of Rs.19,67,450/- @ future interest @ 9 % p.a. Learned counsel for appellant submits that entire amount along with interest is deposited before the Court below.

4. I have perused the impugned judgment. From the impugned judgment it is clear that applicant has incurred Rs.2,47,894/- towards medical expenses. The claimant is therefore surely entitled for the said amount. The learned Judge has found in the impugned order that the disability of applicant is 35%. In that view of the matter, I partly allow this application.

- i) Application is partly allowed and disposed of;
- ii) Applicant/Claimant is entitled to withdraw amount of Rs.5 Lakhs out of total amount deposited before the Court below. At the time of withdrawal of the amount applicant/claimant shall give an undertaking that if insurance company succeeds before this Court in appeal, he will refund the entire amount along with interest as will be calculated by this Court at the time of final hearing within a period of 10 months from the date of judgment;

- iii) Applicant is also granted liberty to move for withdrawal of amount, if he is able to point out necessity for the same;
- 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.

(V. M. DESHPANDE, J)