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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 367 OF 2017
WITH
CIVIL APPLICATION No. 719 OF 2018
WITH
CIVIL APPLICATION No. 3788 OF 2016

B.E.S.T. Undertaking ... Appellant
Vs.
Virendra Ramkalyan Gupta ... Respondent

Mr. Madhukar Kalzunkar a/w Ms. Karishma Jhaveri, for the Appellant and Applicant CAF. 3788/2016 and for Respondent No. 719/2018.

Ms. Varsha Chavan, for the Applicant in CAF. 719/2018, and for the Respondent No. 1 in FA. 367/2017 and CAF. 3788/2016.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 18, 2018

PC :-

FIRST APPEAL No. 367 OF 2017

1. Heard the learned counsel for the Appellant. **Admit.**
Learned counsel Ms. Varsha Chavan waives service of notice for the original claimant No. 1. Call for records and proceedings.

CIVIL APPLICATION No. 719 OF 2018

2. This is an application filed by the original claimant,

who is injured in the accident, for withdrawal of the amount of compensation deposited by the insurance company before the court below. This application is strongly opposed by the insurance company on the ground that the Applicant / injured was negligent. Whether the Applicant was negligent or not will be decided at the time of final hearing of the appeal. The learned counsel for the insurance company submits that the insurance company has deposited the entire amount of compensation, in the court below.

3. After hearing the learned counsel for the Applicant / original claimant and the learned counsel for the insurance company, in the interest of justice, I pass the following order:

- (i) The Applicant / original claimant is entitled to withdraw 50% of the amount deposited by the insurance company in the lower Court alongwith interest. At the time of withdrawal of the said amount, the Applicant shall give an undertaking to the court below that in the event insurance company succeeds in the appeal, he will refund the said amount together with interest, that will be determined by the Court at that time, within a

period of one year from the date of judgment in appeal.

- (ii) The remaining 50% of the amount 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.
- (iii) Civil Application No. 719 of 2018 is accordingly partly allowed and disposed of in the aforesaid terms.

CIVIL APPLICATION No. 3788 OF 2016

4. This is an application filed by the insurance company for stay to the impugned judgment and award of the learned Tribunal. Heard the learned counsel for the insurance company and the original claimant. Today, this Court has admitted the appeal filed on behalf of the insurance company, as also allowed the original claimant to withdraw 50% of the compensation deposited by the insurance company, 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% compensation

awarded vide impugned judgment and award dated 4.4.2015 passed in MACT Application No. 2256 of 2006 by the learned Tribunal at Mumbai, which the trial court will be investing in any nationalised bank.

5. Civil Application No. 3788 OF 2016 is disposed of in the aforesaid terms.

[V. M. DESHPANDE, J.]

Vinayak Halemath