

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2237 OF 2017
WITH
CIVIL APPLICATION NO.2239 OF 2017
WITH
CIVIL APPLICATION NO.2477 OF 2018
WITH
CROSS OBJECTION (STAMP) NO.3699 OF 2018
IN
FIRST APPEAL (STAMP) NO.851 OF 2017**

IFFCO Tokio General Insurance Co. Ltd.

..Applicant

vs.

Shri Yusuf Kasam Khan Dalwai and Ors.

...Respondents

Mrs. Varsha Chavan for the Appellant in FA (ST) No.851/2017 and for applicant in CAF No.2237/2017, 2239/2017 and for Respondent in XOBST No.3699/2018 and CAF No.2477/2018.

Mrs. Sangeeta Salvi for the applicant in XOBST No.3699/2018 and for applicant in CAF 2477/2018 and for Respondent Nos.1 and 2 in FAST No.851/2017, CAF No.2237/2017 and CAF No.2239/2017.

CORAM : V. M. DESHPANDE, J.

DATE : 19th JULY, 2018

P.C.:

CIVIL APPLICATION NO.2237 OF 2017

. This application is moved by the applicant/Insurance Company for condonation of delay of three days in lodging appeal against the award dated 31/8/2016 passed by MACT, Thane in MACP No.198/2014

2. After hearing the learned counsel for the parties, I am of the view that the applicants/Insurance Company has made out a case for condonation of delay in lodging the appeal. Consequently, application is

allowed and disposed of. Delay is condoned. Office to register the application.

FIRST APPEAL (STAMP) NO.851 OF 2017

3. Heard respective counsel. **Admit.** Mrs. Salvi waives service for the Respondent Nos.1 and 2. Call Record & Proceedings.

CROSS OBJECTION (STAMP) NO.3699 OF 2018 in FA(ST) No.851/2017

4. This cross objection is filed by original claimants for enhancement of the decretal amount. This Court today has admitted the appeal filed on behalf of the Insurance Company .

5. In that view of the matter XOBST No.3699/2018 is admitted and it shall be tagged along with main appeal.

CIVIL APPLICATION NO.2477 OF 2018

6. This application is for withdrawal of the amount deposited by the non applicant/Insurance Company.

7. The deceased was one Khatija Yusuf Dalwai, young person of 25 years of age and was doing service as chemist. The deceased was unmarried and the claim petition was filed on behalf of her parents before the Court below. The Court below granted compensation in their favour to the tune of Rs.6,98,000/- along with interest @ 8% p.a.

8. Learned counsel for the Insurance Company submitted before this Court that in view of the order passed by this Court granting ad-interim

stay, Insurance Company has deposited entire amount with the Court below.

9. After hearing the learned counsel for the parties, I pass following order:

ORDER

- i) Application is partly allowed and disposed of;
- ii) Applicants/claimants are entitled to withdraw 50% of the amount deposited by the Insurance Company before the Court below on their giving an undertaking before the said Court that in the event appeal filed on behalf of the Insurance Company is allowed then in that event they will refund the amount along with interest that shall be determined by this Court at the time of final disposal of the appeal within a period of 1 ½ years from the judgment;
- iii) The remaining 50% of the amount shall be invested by the Tribunal with any nationalized Bank initially for a period of 3 years and shall continue to reinvest the same as and when occasion arise so as to save loss of interest.

CIVIL APPLICATION NO.2239 OF 2017

10. This application is filed by the Insurance Company for stay of the impugned judgment and award dated 31/8/2016 passed by MACT, Thane in MACP No.198/2014. Today appeal is admitted by this Court after hearing the parties. So also cross objections filed by the claimants. This Court has also allowed application for withdrawal of the amount filed by claimant to the extent as it is indicated in the said order.

11. In that view of the matter present application is allowed. There shall be stay to the execution and operation of the award passed by the learned Member, MACT, Thane in MACT Application No.198/2014 dated

31/8/2016 in respect of 50% of the amount which this Court is directed to invest with the Nationalized bank. Ad-interim stay granted by this Court (Coram: Mrs. Mridula Bhatkar, J) dated 9/8/2017 is made absolute. Civil Application is allowed and disposed of.

(V. M. DESHPANDE, J)