

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

**FIRST APPEAL NO.926 OF 2017
WITH
CIVIL APPLICATION NO.2476 OF 2018
WITH
CIVIL APPLICATION (St) NO.16824 OF 2017
WITH
CIVIL APPLICATION (St) NO.35666 OF 2017**

Iffco Tokio General Insurance Co. Ltd. ..Appellant

vs.

Dyanesh Tukaram Bhawari & Ors. ...Respondents

Mrs. Varsha Chavan for the Appellant in FA 926/2017 and for Respondent in CAF 2476/2018 .

Mrs. Sangeeta Salvi for the Respondent Nos.1 and 2 in FA 926/2017 and for appellant in CAF 2476/18.

CORAM : V. M. DESHPANDE, J.

DATE : 19th JULY, 2018

P.C.:

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

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2. Heard learned counsel for the parties.

3. This application is filed on behalf of the original claimants for withdrawal of the amount awarded in their favour by the learned Tribunal, Thane in MACT Application No.224/2014 dated 31/8/2016. By the said

award the Insurance company and another opponent in the said claim petition were directed to pay amount of Rs.4,98,000/- along with interest @ 8 % p.a. in favour of the applicant/claimant. The appeal was filed by the Insurance Company against the award along with application for stay and on 7/9/2017 this Court granted ad-interim stay in favour of the Insurance Company on condition that the Insurance Company to deposit entire decretal amount along with interest accrued thereon. It is submission of the learned counsel for the applicants/claimants and also the Insurance company that in pursuance of the said order the Insurance Company has already deposited the entire amount so awarded before the Court below.

4. The present applicants are sons of the deceased. Appeal will take its own time for final disposal. The appeal is admitted on the ground of quantum and also on the count of composite negligence. In that view of the matter, 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 they 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;
- iv) The statutory amount deposited by the Insurance Company with this Court be transferred to the Tribunal below and the said

amount shall also be invested with Nationalized Bank as indicated above;

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5. This application is for stay. Heard learned counsel for the appellant and claimant. Today appeal is admitted by this Court after hearing the parties and also application for withdrawal of the amount filed by claimant is allowed in part. The appellants have already deposited entire amount.

6. In that view of the matter, there shall be stay to the execution and operation of the award in respect of 50% of the compensation awarded by order dated 31/8/2016 passed by the learned Member, MACT, Thane in MACT Application No.224/2014 which the Insurance Company will be investing in the Nationalized Bank. Civil Application is allowed and disposed of.

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7. Learned counsel for the applicant prays for withdrawal of this Civil Application for stay since another application for the same relief is already filed on record.

(V. M. DESHPANDE, J)