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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 3403 OF 2017
IN
FIRST APPEAL (St.) No. 28682 OF 2017
WITH
CIVIL APPLICATION No. 2475 OF 2018
WITH
CIVIL APPLICATION No. 3404 OF 2017

The New India Assurance Co. Ltd. ... Appellant
Vs.
Sundar Philip Rathod & Ors. ... Respondents

Mr. S. M. Dange, for the Appellant and for Applicant in CAF. 3403/2017, CAF. 3404/2017 and for Respondent in CAF. 2475/2018.

Mr. Pritesh K. Bohade, for the Respondent Nos. 1 to 3 in FAST. 28682/2017, CAF. 3403/2017, 3404/2017 and for Applicant in CAF. 2475/2018.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 18, 2018

PC :-

CIVIL APPLICATION No. 3403 OF 2017

1. This is an application filed by the insurance company for condonation of 80 days caused in lodging the first appeal, challenging judgment and award dated 4.3.2017 passed by the

learned Member, Motor Accident Claims Tribunal, Nashik in MACP No. 1160 of 2011. Learned counsel Pritesh Bohade waives service of notice for Respondent No. 1 to 3 and 4 did not appear though served. Presence of Respondent No. 4, who was driver of the offending vehicle, is not necessary for the purpose of deciding this application. For the reasons stated in the application, the delay is condoned. Application is accordingly allowed and disposed of in terms of prayer clause (a). Office to register the appeal after removal of office objections by the Appellant.

FIRST APPEAL (St.) No. 28682 OF 2017.

2. Heard the learned counsel for the Appellant. **Admit.** Learned counsel Mr. Pritesh Bohade waives service of notice for the Respondent Nos. 1 to 3. Call for records and proceedings.

CIVIL APPLICATION No. 2475 OF 2018

3. This is an application filed by the original claimants, who are - widower (Applicant No.1), children (Applicant No. 2 and 3 of the deceased Smita Rathod, for withdrawal of the

amount of compensation deposited by the insurance company before the court below. The learned court below vide impugned judgment and award has directed the insurance company and another non-applicant therein to pay Rs. 6,00,000/- to the claimants with interest @ 6% p.a.. The learned counsel for the insurance company has made a statement that the insurance company has deposited the entire compensation amount in the lower court.

4. After hearing the learned counsel for the Applicants / original claimants and the learned counsel for the insurance company, in the interest of justice, I pass the following order:

- (i) The Applicants are entitled to withdraw 50% of the amount deposited by the insurance company in the lower court, alongwith the accrued interest.
- (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. 2475 of 2018 is accordingly partly allowed and disposed of in the aforesaid terms.

CIVIL APPLICATION No. 3404 OF 2017

5. 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 claimants. Today, this Court has admitted the appeal filed on behalf of the insurance company, as also allowed the original claimants 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% of the compensation awarded vide impugned judgment and award, dated 4.3.2017 passed in MACP Application No. 1160 of 2011 by the learned Tribunal at Pune, which the trial court will be investing in any nationalised bank.

6. Civil Application No. 3404 of 2017 is disposed of in the aforesaid terms.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath