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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No.3401 OF 2017
IN
FIRST APPEAL (St.) No. 28632 OF 2017
WITH
CIVIL APPLICATION No. 2466 OF 2018
WITH
CIVIL APPLICATION No. 3402 OF 2017

The Divisional Manager,
the new India Assurance Co. Ltd. ... Appellants
Vs.
Smt. Lalita Ravindra Shinde & Ors. ... Respondents

Mr. S. M. Dange, for the Appellant, for the Applicants in CAF. 3401/2017, 3402/2017 and for Respondent in CAF. 2466/2018.

Mr. Pritesh K. Bohade, for the Applicant in CAF. 2466/2018 and for the Respondent Nos. 1 to 4 in CAF. 3401/2017, 3402/2017 and FAST. 28632/2017.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 18, 2018

PC :-

CIVIL APPLICATION No. 3401 OF 2017

1. This is an application filed by the insurance company for condoning the delay of 82 days caused in lodging the first

appeal. Heard the learned counsel appearing for the Applicant and Respondent Nos. 1 to 4. Presence of respondent No. 5, who is owner of offending vehicle is not necessary for the purpose of deciding this application. For the reasons stated in the application, 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. 28632 OF 2017

2. Heard the learned counsel for the Appellant. **Admit.** Learned counsel Mr. Pritesh Bohade waives service of notice for the original claimants. Call for record and proceedings.

CIVIL APPLICATION No. 2466 OF 2018

3. This is an application filed by the original claimants, for withdrawal of the amount of compensation deposited by the insurance company before the court below. The applicants are widow (applicant No. 1), son (applicant No. 2) and parents (applicant Nos. 3 and 4) of deceased Ravindra Shinde, who died

in accident. The learned court below has vide impugned judgment and award dated 7.3.2017 passed in MACP No. 1144 of 2011 directed the insurance company and another opponent therein to pay Rs. 8,50,000/-to the claimants inclusive of comeprnsation of no fault liability with interest @ 6% p.a. from the date of petition till its realisation. The learned counsel for the Appellant that the insurance company has deposited entire amount of compensation, in the court below.

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

- (i) The Applicants herein / claimants are entitled to withdraw 50% of the amount deposited by the insurance company in the lower Court alongwith interest. Out of 50% amount with interest, Applicant Nos. 1 and 2 are entitled to withdraw 75% amount, and Applicant No. 4 is entitled to withdraw 25% amount.
- (ii) The remaining 50% of the amount together with statutory deposit (already transferred) 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. 2466 of 2018 is accordingly partly allowed and disposed of in the aforesaid terms.

CIVIL APPLICATION No. 3402 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 and the learned counsel appearing for the offending vehicle. Looking to the question involved in the appeal, 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% compensation awarded vide impugned judgment and award dated 7.3.2017 passed in MACP

No. 1144 of 2011 by the learned Member, Motor Accident Claims Tribunal at Nashi, which the trial court will be investing in any nationalised bank.

6. Civil Application No. 3402 of 2017 is disposed of in the aforesaid terms.

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

Vinayak Halemath