

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

**FIRST APPEAL (STAMP) NO.29103 OF 2017
WITH
CIVIL APPLICATION NO.3437 OF 2017
WITH
CIVIL APPLICATION NO.2013 OF 2018
WITH
CIVIL APPLICATION NO.2014 OF 2018
WITH
CIVIL APPLICATION NO.3438 OF 2017**

Reliance General Insurance Co. Ltd. ..Appellant

vs.

Mr. Ramesh Shankar Gowda and Anr. ...Respondents

Ms.Poonam Mital for the Appellant in FAST No.29103/2017, for Applicant in CAF No.3437/2017 and for Respondent in CAF 2013/2018.

Mr.Nitesh V. Bhutekar for the Respondent No.1 in FAST No.29103/2017 and CAF 3437/2017 and for applicant in CAF 2013/2018.

CORAM : V. M. DESHPANDE, J.

DATE : 2nd JULY, 2018

P.C.:

CIVIL APPLICATION NO.3437 OF 2017

. This application is for condonation of delay. Heard learned counsel for the parties. For deciding this application for condonation presence of other non applicant is not at all necessary since before the Trial Court he was ex-parte. This application for condonation of delay though is vehemently opposed by the Respondent, for the reasons stated in the application, application is allowed. Delay is condoned. Office is directed to register the appeal. Application is disposed of.

FIRST APPEAL (STAMP) NO.29103 OF 2017

2. Heard learned counsel for the parties. Today, this Court has condoned the delay in lodging the appeal. **Appeal is admitted.** Call R & P. Learned counsel waives service for original claimant.

CIVIL APPLICATION NO.2013 OF 2018

3. This application is for withdrawal of the amount deposited by the Insurance Company before the Court below. Heard learned counsel for the parties. By the impugned award dated 6/12/2016, the learned Member of MACT, Mumbai has directed the opposite party in the Claim Application No.2333 of 2013 to jointly and severally pay compensation of Rs.59,50,000/- @ 9% p.a. While passing the award, learned Judge has directed the Insurance Company to pay the awarded amount and rights were given to the Insurance Company to recover the same from the opposite party owner. In the accident left leg of the applicant was required to be amputated. It appears that the applicant has been implanted with artificial limb and life of said artificial limb is about 5 years.

4. Though the learned counsel for the Insurance Company has seriously disputed income of the applicant/claimant, in paragraph 23 of the impugned order finding is recorded by the learned Judge of the Court below that the claimant applicant has filed income tax return which is at Exh.24 which shows that his yearly income was Rs.9,20,046/-. The learned Judge has applied the multiplier of 14. The impugned award shows that the applicant was required to incur Rs.12 Lakhs towards medical expenses. The learned Judge has also granted him compensation under various heads which can be seen from paragraph 29 of the impugned order.

5. Looking to the fact that the applicant's left limb was required

to be amputate and is now implanted artificial limb which is having life of limited duration and is required to be replaced after it's life is over, in my view, the application for withdrawal can be considered favorably and I pass following order:

- i) Application is partly allowed and disposed of;
- ii) Applicant is entitled to withdraw an amount of Rs.30 Lakhs out of the amount deposited before the Court below. At the time of withdrawal of the amount applicant/claimant shall give an undertaking that if insurance company succeeds before this Court in appeal, he will refund the entire amount along with interest as will be calculated by this Court at the time of final hearing within a period of 10 months from the date of judgment;
- iii) Applicant is also granted liberty to move application for withdrawal of amount after 1 ½ years by pointing necessity for the same;
- iv) The Motor Accident Claims Tribunal, Thane shall invest the remaining amount with any nationalized bank in Fixed Deposit Receipt initially for a period of 3 years and thereafter it shall be renewed year after year to save the loss of interest;
- v) The statutory amount of Rs.25,000/- which is deposited at the time of filing of the appeal shall also be invested by the Registry in the Fixed Deposit Receipt with any Nationalized Bank to save loss of interest.

CIVIL APPLICATION NO.2014 OF 2018

6. This application is for substituted service to Respondent No.2.

For the reasons stated in the application, application is allowed in terms of its prayer clause and is accordingly disposed of.

CIVIL APPLICATION NO.3438 OF 2017

7. This application is for stay of the impugned order dated 6/12/2016 in Claim Application No.2333 of 2013. The learned counsel for the applicant has submitted that entire amount i.e. Rs.80,78,000/- is deposited by the Insurance Company before the Court below. Statement is accepted. Today, this Court has admitted the appeal. This Court has also partly allowed application filed on behalf of the applicant for withdrawal of the amount with liberty to the applicant claimant to move application in future for withdrawal by pointing out necessity. Since entire amount is deposited, application is allowed and disposed of. During pendency of this appeal, there shall be stay to the judgment dated 6/12/2016 passed in Claim Application No.2333 of 2013.

(V. M. DESHPANDE, J)