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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 239 OF 2017
IN
FIRST APPEAL (St.) No. 24027 OF 2016
WITH
CIVIL APPLICATION No. 881 OF 2018

National Insurance Co. Ltd. ... Appellant
Vs.
Smt. Mala Manish Gupta & Ors. ... Respondents

Mr. Rahul Mehta I/b KMC Legal Venture, for the Appellant and Applicant in CAF. 239/2017 and for Respondent Nos. 1 & 2 in CAF. 881/2018.

Mr. Tejpal S. Ingale, for the Respondent Nos. 1 & 2 in CAF. 239/2017 & FAST. 24027/2016, and for Applicant in CAF. 881/2018.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 4, 2018

PC :-

CIVIL APPLICATION No. 239 OF 2017

1. This application filed by the insurance company for condonation of 164 days delay caused in filing the first appeal, challenging the judgment and award of the learned Tribunal, passed in MACT Application No. 2643 of 2006. Heard the

learned counsel appearing for the parties. This application is decided in the absence of Respondent No. 3 who is owner of the offending vehicle since insurance company has preferred appeal only on the point of quantum of compensation awarded by the Tribunal. For the reasons stated in the application, said delay is condoned and Civil Application No. 239 of 2017 is allowed and disposed of in terms of prayer clause (a). Office is directed to register the appeal.

CIVIL APPLICATION No. 881 OF 2018

3. This application is filed for withdrawal of the amount, deposited by the insurance company with the Tribunal, by the Original claimants. By an impugned judgment and award dated 6.10.2015 passed in MACP No. 2643 of 2006, learned Tribunal directed insurance company and opposite party therein to pay Rs.14,85,000/- which is inclusive of amount of no fault liability alongwith interest @ 7.5% p.a.

4. Learned counsel Mr. Rahul Mehta submits that Insurance company has deposited the entire amount before the

learned Tribunal at Mumbai. After hearing the learned counsel appearing for the parties, I pass following order:

- (i) Applicant No. 1 Smt. Mala Manisha Gupta for herself and on behalf of Applicant No. 2 Mst. Abhinav Gupta is entitled to withdraw 50% of the amount deposited by the insurance company with the Tribunal at Mumbai. At the time of withdrawal of said amount, Applicant No. 1 for herself and on behalf of minor Applicant No. 2 shall give an undertaking to the Tribunal that in the event Appellant insurance company succeeds in the appeal, she will refund the amount with interest, that may be determined by the Court, at that time;
- (ii) Registry is directed to transfer statutory deposit of Rs. 25,000/- deposited by the insurance company in this Court to the learned Tribunal at Mumbai;
- (iii) Learned Tribunal shall invest the remaining 50% amount together with the amount of statutory

deposit in any nationalised bank, initially for a period of three years and continue to do so, as and when occasion arises;

- (iv) Applicants are at liberty to apply for withdrawal of further amount after two years, if they are able to demonstrate hard pressing need for the withdrawal of the amount;
- (iii) Civil Application No. 881 of 2018 is partly allowed and disposed of in the aforesaid terms.

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

Vinayak Halemath