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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 705 OF 2016
IN
FIRST APPEAL (St.) No. 33459 OF 2015
WITH
CIVIL APPLICATION No. 706 OF 2016
WITH
CIVIL APPLICATION No. 2271 OF 2018

National Insurance Co. Ltd. ... Appellant
Vs.
Mohan Gajanan Pradhan & Ors. ... Respondents

Ms. Ruchika Dave I/b Asim Vidyarthi, for the Appellant and Applicant in CAF. 705/2016, CAF. 706/2016, and for Respondent Nos. 1 to 3 in CAF. 2271/2018.

Mr. T. J. Mendon, for the Applicant in CAF. 2271/2018, and for the Respondent Nos. 1 to 3 in CAF. 705/2016, 706/2016 & FAST. 33459/2015.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 4, 2018

PC :-

CIVIL APPLICATION No. 705 OF 2016

1. This application is filed by the insurance company for condonation of delay of 32 days caused in filing the first

appeal, challenging the judgment and award of the learned Ex-Officio Member, Motor Accident Claims Tribunal, at Raigad, district Alibag passed in MAC Application No. 490 of 2011. Heard the learned counsel appearing for the parties. This application is decided in the absence of Respondent No. 4 who is owner of the offending vehicle, which is insured with the Applicant insurance company. For the purpose of decision of the present application, his presence is not necessary. This application is strongly opposed by the learned counsel for the Respondent Nos. 1 to 3. However, for the reasons stated in the application, said delay is condoned and Civil Application No. 705 of 2016 is allowed and disposed of in terms of prayer clause (a). Office is directed to register the appeal.

CIVIL APPLICATION No. 2271 OF 2018

2. This application is filed for withdrawal of the amount, deposited by the insurance company with the Tribunal, by the Original claimants. By the judgment and award dated 4.7.2015 passed in Claim Application No. 490 of 2011, learned

Tribunal directed insurance company and opposite party therein to pay Rs.63,64,000/- which is inclusive of amount of no fault liability alongwith interest @ 7.5% p.a. Learned counsel Ms. Ruchika Dave submits that the Insurance company has deposited the entire amount before the learned Tribunal.

3. Applicant No. 1 Mohan Pradhan is father of the deceased, who is now retired; Applicant No. 2 mother of the deceased is a house wife; and Applicant No. 3 is brother of the deceased, who is now employed.

4. Learned counsel for the Applicants submits that Applicant No. 1 is getting pension, though is not able to give exact amount of the pension. Similarly, Applicant No. 3 is an employed person. Learned counsel is also unable to give exact income of Applicant No. 3. In the interest of justice, I pass the following order:

(i) Applicant No. 1 Mohan Gajanan Pradhan is entitled to withdraw Rs.5,00,000/-; Applicant No. 2 Leela Mohan Pradhan is entitled to withdraw

Rs.10,00,000/-, out of the amount deposited by the insurance company with the Tribunal at Alibag, district Raigad. Presently, Applicant No. 3 Vinay Pradhan is not entitled to withdraw any amount. At the time of withdrawal of said amount, Applicant No. 1 and Applicant No. 2 shall give an undertaking to the Tribunal that in the event Appellant insurance company succeeds in the appeal, they will refund the amount with interest, that may be determined by the Court, at that time;

- (iii) Registry is directed to transfer the statutory deposit made by the insurance company in this Court to the Motor Accident Claims at Alibag. Learned Tribunal shall invest the remaining amount together with the statutory amount deposited by the insurance company in any nationalised bank, initially for a period of three years and continue to do so, as and when occasion arises, in order to save loss of interest

of the Applicants;

- (iv) Applicant Nos. 1 and 2 are at liberty to apply to this Court for withdrawal of further amount after two years, if they are able to demonstrate hard pressing necessity for such withdrawal;
- (v) Civil Application No. 2271 of 2018 is partly allowed and disposed of in the aforesaid terms.

CIVIL APPLICATION No. 706 OF 2016

5. This is an application filed by the insurance company for stay to the impugned order dated 4.7.2015. Heard the learned counsel appearing for the respective parties. This Court on 18.2.2016 issued notice to the respondents, and granted ad-interim stay to the operation and execution of the impugned order. Today this court has allowed the application of the insurance company for condonation of delay, and also allowed Applicant/claimant Nos. 1 and 2 to withdraw the amounts, as indicated in the order. Learned counsel for the Applicant submits that insurance company has already deposited the entire

amount of the award. In that view of the matter, present application is allowed. There shall be stay to the operation and execution of the impugned order dated 4.7.2015 during pendency of the appeal. Civil Application No. 706 of 2016 is accordingly disposed of.

[V. M. DESHPANDE, J.]

Vinayak Halemath