IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4352 OF 2018
IN
FIRST APPEAL NO.35 OF 2017

Neha Nitin Gujare and Ors. . .. Applicants

V/s.

The United India Insurance Co. Ltd and Ors. .. Respondents

Mr.T.J.Mendon for the Applicants

Mr.Nikhil Mehta i/b M/s.KMC Legal Venture for the Respondents

CORAM: K.K. TATED &
N. J. JAMADAR, JJ.

DATED : DECEMBER 17, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 By this Civil Application, Applicants original claimants are seeking permission to withdraw further amount, as deposited by the appellant Insurance Company.

3 In the present proceedings, the Motor Accident Claims Tribunal by its judgment and award dated 22.10.2012, directed the appellate Insurance Company to pay sum of Rs.41,30,000/- to the Applicants original claimants towards compensation along

with interest @ 7.5% p.a from the date of petition till realisation of the amount, including amount of Rs.50,000/- payable under no fault liability.

4 Insurance Company preferred present First Appeal. First Appeal was admitted by this court and directed Insurance Company to deposit entire awarded amount in the Tribunal. Same was done by Insurance Company.

5 In Civil Application No.1549 of 2013 for stay, this court by order dated 22.07.2013 permitted Claimant no.1 Neha Nitin Gujare to withdraw sum of Rs.4.0 lacs without any security and claimant no.5 Sunita Shridhar Gujare to withdraw sum of Rs.1.0 lac without any security.

6 Thereafter, claimants preferred Civil Application No.2432 of 2013 for withdrawal of further amount. This court by order dated 19.10.2016 permitted Applicant no.1 Neha Nitin Gujare to withdraw further sum of Rs.5 lacs with accrued interest without any security and claimant no.2 Ojhas Nitin Gujare was permitted to withdraw sum of Rs.5 lacs with accrued interest without any security. This itself shows that till today the Claimants already withdrew sum of Rs.15 lacs with interest in all without any security.

7 The learned counsel for the Applicant submits that Claimants received notice dated 06.04.2018 from Padmavati Co-op.Housing Society Ltd. calling upon them to pay the arrears of maintenance to the extent of Rs.1,44,358/-. He also relies on

notice dated 15.10.2018 issued by Thane Municipal Corporation calling upon them to pay sum of Rs.2,97,340/- towards the property tax. He also relies on the Society bill no.356 dated 20.07.2018 calling upon the Claimants to pay sum of Rs.1,98,713/- towards the society charges including arrears.

8 The learned counsel for the Applicants submit that they also received another notice dated 26.11.2018 from Thane Municipal Corporation for payment of Rs.1,67,277/- towards property tax. He submits that to clear all these liabilities, Claimants filed the present Civil Application to withdraw the amount. He further submits that Applicant no.4 Sunita Shridhar Gujare is a Senior Citizen of age 87 years. He submits that she requires certain amount for her medical expenses. Therefore, in the interest of Justice, this Hon'ble Court be pleased to permit the Claimants to withdraw remaining amount without furnishing any security. He submits that if Civil Application is not allowed, irreparable loss will be caused to them.

9 On the other hand, the learned counsel for the appellant Insurance Company submits that documents on which the Claimants relied in the present Civil Application for withdrawal of the amount, were available to the Applicants when they had filed earlier Civil Application no.2432 of 2013 for withdrawal of amount. Therefore, there is no question of relying on these documents. He further submits that they filed the present First Appeal challenging the entire quantum of the amount awarded by the Tribunal in favour of Claimants. Therefore, if Claimants, are

permitted to withdraw entire amount without any security, nothing will survive in the present proceedings. Therefore, there is no substance in the present Civil Application and same is required to be dismissed with costs.

10 We have heard both the sides at length.

11 It is to be noted that till today claimants already withdrew sum of Rs.15,00,000/- without furnishing any security i.e. more than 40% amount awarded by the Tribunal. Appeal filed by the Insurance Company, is pending for hearing and final disposal. Therefore, it is not possible to permit the Claimants to withdraw remaining amount without furnishing any security. They must provide certain security to the satisfaction of the Tribunal. Hence, following order is passed:

a) Applicants original Claimants are permitted to withdraw remaining amount along with accrued interest, in proportionate share as determined by the Tribunal, if they so desire, by furnishing bank guarantee of any nationalised bank to the satisfaction of the Tribunal with an undertaking that they will keep the said bank guarantee alive till the hearing and final disposal of the First Appeal.

b) If bank guarantee is provided within four weeks from today, Tribunal is directed to allow the Applicants Claimants to withdraw entire amount on the basis of the said security, otherwise said amount be continued in fixed deposit till the hearing and final disposal of First Appeal.

c) Civil application stands disposed of accordingly.

d) No order as to costs.

(N. J. JAMADAR, J) (**K.K. TATED, J.**)