IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3373 OF 2018
IN
FIRST APPEAL (ST) NO. 23117 OF 2018

ICICI Lombard General Insurance Co. Ltd. ….Applicant
V/s.
Rajendra Govind Joshi and ors. ….Respondents

WITH
CIVIL APPLICATION NO. 641 OF 2019
IN
FIRST APPEAL (ST.) NO. 23117 OF 2018

Rajendra Govind Joshi and anr. ….Applicant

In the matter between :ICICI

Lombard General Insurance Co. Ltd. ….Appellant
V/s.
Rajendra Govind Joshi and ors. ….Respondents

Ms. Nisha Gandhi I/b. Res Juris for the applicant in CAF/3373/2018 and for the appellant in FAST/23117/2018 and for the respondent in CAF/641/2019.

Mr. Ramdas A. Shelke for respondent nos.1 and 2 and for the applicant in CAF/641/2019.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 28th AUGUST, 2019.

P.C.

1. By this application, the applicant has sought to condone the delay of 154 days in filing the first appeal challenging the Judgment and Award dated 27/11/2017 passed by Learned Member, MACT, Kolhapur, in Claim Application No.676/2010.

2. Having considered the reasons stated in para 7 of the application, the delay is condoned subject to payment of costs of Rs.5000/-. The applicant to pay cost of Rs.5000/- to the Maharashtra State Legal Service Authority. Appeal be registered subject to removal of office objection, if any.

3. Civil application No.3373 of 2018 is disposed of.

CIVIL APPLICATION NO. 641 OF 2019

1. By this application, the applicants-Original Claimants have sought withdrawal of compensation awarded by the Claims Tribunal by impugned Judgment and Award dated 27/11/2017 passed by Learned Member, MACT, Kolhapur, in Claim Application

No.676/2010.

2. By the impugned judgment and award, the Claims Tribunal was awarded total compensation of Rs.48,90,000/- with interest at the rate of 7% per annum from the date of application till actual realization. The applicants, who are the parents of the deceased, have sought withdrawal of compensation on the grounds that after the death of their son, they had to stop their business of manufacturing MV Batteries. The applicants have stated that they are senior citizens and have no other source of income. It is contended that they need the money to meet medical expenses and other expenses.

3. The appellant-Insurance Company has challenged the impugned judgment on several grounds, including the ground of breach of terms and conditions of the policy.

4. The impugned judgment and award indicates that the deceased was a 19 years old boy and was studying in final year of

Mechanical Engineering. The Tribunal has considered the income of the deceased to Rs.30,000/- per month and added 50% towards future prospects. *Prima-facie*, the compensation appears to be on higher side. Hence, I am not inclined to allow withdrawal of the entire compensation.

5. Considering the reasons stated in the application, as well as the grounds raised in the appeal memo, the applicants are permitted to withdraw 15% of the compensation i.e. Rs.7,33,000/- each, with proportionate interest accrued thereon. Suffice it to say that the withdrawal is subject to final outcome of the appeal.

6. The applicants shall furnish an undertaking before the Tribunal that they shall abide by the final orders that may be passed in this appeal.

7. The balance amount be reinvested in the names of the respective applicants, in any nationalized bank after making the payment as stated above.

8. Civil Application No. 641 of 2019 stands disposed of.

FIRST APPEAL (ST) NO. 23117 OF 2018.

1. Issue notice to the respondent nos. 1 to 3, returnable after three weeks. Private service is permitted.

2. Learned counsel Ms. Nisha Gandhi, for respondent Nos. 1 and 2 waives service.

3. Appeal be listed for admission after three weeks.

4. Stand over to 18th September, 2019.

(ANUJA PRABHUDESSAI, J.)