

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

**CIVIL APPLICATION NO.511 OF 2018
WITH
CIVIL APPLICATION NO.692 OF 2019
IN
FIRST APPEAL NO.209 OF 2018
WITH
FIRST APPEAL NO.209 OF 2018**

Iffco Tokio General Insurance Co.Applicant
Ltd.

In the matter between

Iffco Tokio General Insurance Co. ...Appellants
Ltd.

V/s.

Dilip Waliba Warungse and Ors.Respondents

...

Ms Dipika Prabhala I/b. M/s. Res Juris for the Appellant in FA/209/2018, for the Applicant in CAF/511/2018 and for the Respondents in CAF/692/2019.

Mr. Sachin D. Kadam for the Respondent No.1 in FA/209/2018 and for the Applicant in CAF/692/2019.

Mr. Sachin Gite for the Respondent No.2 in FA/209/2018.

Mr. Harsh Nishar I/b. Mr. J.D. Khairnar for the Respondent No.3 in FA/209/2018.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 06th AUGUST, 2019.

P.C.:-

ORDER IN CIVIL APPLICATION NO.511 OF 2018:-

The learned counsel for the Applicant-Insurance Company

states that the Insurance Company has deposited the entire compensation as per the impugned judgment and order before the Claims Tribunal, Nashik. Said statement is not controverted by the learned counsel for the Respondent /original Claimant.

2. In the light of the said statement, execution and implementation of the impugned judgment and award is stayed till the disposal of the Appeal.

3. The Civil Application stands disposed of.

ORDER IN CIVIL APPLICATION NO.692 OF 2019:-

4. By this application, the Applicant who is the original claimant has sought withdrawal of the compensation awarded by the Claims Tribunal, Nashik, vide judgment dated 31st March, 2017 in M.A.C.P. No.16 of 2010. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.16,53,125/- with interest @ 8% per annum from the date of the petition till realization of the entire amount.

5. The Applicant had met with an accident on 7/7/2007

involving a vehicle, which was duly insured by the Respondent-Insurance Company. The Applicant had sustained grievous injury resulting in amputation of his right leg. The Applicant has stated that he was a meson by profession and is unable to earn his livelihood on account of injury sustained in the accident. He has stated that he has no other source of income and being a sole earning member, he requires money to maintain his family.

6. Considering the reasons stated in the application as well as the grounds raised in the appeal memo, in my considered view it would be just and proper to allow the Applicant to withdraw 50% of the compensation with proportionate interest accrued thereon. Suffice it to say that the withdrawal of the compensation is subject to final outcome of the Appeal. The Applicant /original claimant shall give an undertaking that he shall refund the compensation alongwith interest in the event it is held that the Respondent-Insurance Company is not liable to indemnify the insured.

7. The Civil Application stands disposed of.

ORDER IN THE FIRST APPEAL NO. 209 OF 2018

8. The learned counsel for the Appellant seeks leave to file notes of evidence. Leave is granted. To be filed in the registry before the next date with copy to the other side. Parties are put to notice that attempts will be made to dispose of the Appeal finally at the stage of admission.

9. Stand over to 17/9/2019.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha
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