

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 1282 OF 2019
IN
FIRST APPEAL (ST) No. 10088 OF 2019

H.D.F.C. Ergo General Insurance
Co. Ltd.

...Applicant

Vs.

Mrs. Meeta Himmat Parmar and Ors.

...Respondents

Mr. A.P. Kulkarni for Applicant

CORAM: K.K. TATED, J.

DATE : MAY 2, 2019

P.C. :

1. Not on Board. At the request of learned counsel for the Applicant, matter is taken on board.
2. Heard learned counsel Mr. A.P. Kulkarni for the Applicant.
3. By this Civil Application, the Applicant Insurance Company is seeking stay of the operation and implementation of the judgment and award dated 15th March, 2018 passed by the Motor Accident Claim Tribunal at Mumbai in MACP No. 1898 of 2011 holding that the Respondents/Claimants are entitled sum of Rs.42,24,646/- by way of compensation with interest @ 8% from the date of application till realization.
4. Learned counsel for the Applicant submits that the Respondents /Original Claimants filed Execution Application No. 224 of 2018 before the Tribunal for recovery of Rs. 63, 35,198/-. He

submits that if the entire amount is recovered by the Respondents/Original Claimants in execution application, then nothing will survive in the present proceedings.

5. Learned counsel for the Applicant submits that they have good chance of success in the present proceeding. He submits that in the present matter, the accident took place on 10th November, 2010 whereas the policy was issued with effect from 11th November, 2010 to 10th November, 2011. He submits that on the date of accident, there was no valid policy in respect of offending vehicle and therefore, there is no question of holding the Insurance Company to pay the compensation.

6. It is to be noted that the accident had occurred on 10th November, 2010. Claimant No.1 lost her husband. Whereas, Claimant Nos.2 and 3 are minor children of the deceased and Claimant Nos. 4 and 5 are senior citizens and parents of the deceased. Because of the accident, the Respondents/ Claimants filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation. The Tribunal, after considering the evidence on record, held that the Claimants are entitled to get compensation of Rs.42,23,646/- along with interest @ 8% p.a. Taking into consideration these facts, I am of the opinion that Claimant No.1 and Claimant Nos. 4 and 5 may be permitted to withdraw some amount during the pendency of the present First Appeal.

7. It is to be noted that in the present proceeding, there is a delay on the part of the Applicant to file First Appeal by 292 days.

8. Considering the submissions made by learned counsel for the

Applicant and the averments made in the civil application, I am satisfied that the Applicant has made out a case for following order:

ORDER

- (A) Civil Application is allowed in terms of prayer clause (a) on condition that the Applicant to deposit the entire awarded amount along with interest in Motor Accident Claim Tribunal, Mumbai on or before 21st June, 2019, failing which, civil application shall stand dismissed without referring back to the Court.

Prayer clause (a) reads thus:

“(a) That pending hearing and final disposal of the present First Appeal, the effect, operation, implementation and execution of the impugned Judgment and Award dated 15.03.2018 passed by the Motor Accidents Claim Tribunal, Mumbai in M.A.C.P. 1898 OF 2011 and disbursal of amount there under, be kindly stayed.”

- (B) If amount is deposited within stipulated time as stated hereinabove, Claimant No.1 Meeta Himmat Parmar is entitled to withdraw 20% compensation amount deposited by the Applicant subject to outcome of the First Appeal.
- (C) Claimant Nos.4 and 5 Mrs Vallabhji @ Vasantlal Bhojraj Parmar and Mrs. Veerbai Vallabhji @ Vasantlal Parmar are entitled to withdraw 10% each compensation amount deposited by the Applicant with accrued interest thereon subject to outcome of the First Appeal.
- (D) The Tribunal is directed to invest the remaining balance amount in the fixed deposit of any nationalized bank initially, for a period of one year and same to be continued till further orders.

- (E) Liberty granted to the Claimants to make appropriate Application for withdrawal of further amount and that Application be decided on its own merits.
- (F) The Registry is directed to transfer sum of Rs.25,000/- deposited by the Applicant at the time of filing of the First Appeal to the Motor Accident Claim Tribunal, Mumbai in MACP No. 1898 of 2011 Account.

Civil application stands disposed off accordingly.

(K. K. TATED, J.)