

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2315 OF 2018
WITH
CIVIL APPLICATION NO. 2316 OF 2018
WITH
CIVIL APPLICATION (ST) No. 31524 OF 2018
IN
FIRST APPEAL (ST) NO. 15863 OF 2018

ICICI Lombard General Insurance Co. ltd.

..Appellant

v/s.

Lata Khanderao Phugat & Ors.

..Respondents

Ms. Nesha Gandhi i/b. Ms. Deepika Prabhala -Res. Juris for the Applicant in CAF/2315/2018, CAF/2316/2018 and for the Respondent in CAFST/31524/2018.

Mr. Rajan Pawar for the Respondent Nos.1 to 3 and for the applicant in CAFST/31524/2018.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 14th OCTOBER, 2019.

P.C.

CIVIL APPLICATION NO. 2315 OF 2018.

S.O. to 18.11.2019.

CIVIL APPLICATION NO. 2316 OF 2018.

1. By this application the applicant-Insurance Company has sought

to stay the execution and implementation of the impugned judgment and award dated 7.11.2017 passed by the MACT, Nashik in Claim Application No.902 of 2014.

2. The learned Counsel for the applicant states that entire amount along with interest has been deposited before the Tribunal. The said statement is not controverted by the learned Counsel for the respondent nos.1 to 3, -original claimants.

3. In the light of the said statement, execution of judgment and award dated 7.11.2017 passed by the MACT, Nashik in Claim Application No.902 of 2014 is stayed till disposal of the appeal.

4. Civil Application stands disposed of.

CIVIL APPLICATION (ST) NO. 31524 OF 2018.

1. The applicants, who are the Original Claimants have sought withdrawal of the compensation amount deposited by the Insurance Company before the Claims Tribunal, Nashik.

2. By the impugned judgment and award dated 7.11.2017 the MACT, Nashik, has awarded total compensation of Rs.4,90,000/- with interest @ 9% per anum from the date of claim petition till

realization.

3. The applicants, who were the original claimants had filed petition under Section 166 of the Motor Vehicles Act in view of death of Khanderao Baburao Phugat, arising from a motor vehicular accident involving truck bearing no. MH-15/CK-8982. The said truck was owned by the respondent no.2 and insured by the appellant insurance company.

4. The learned Counsel for the appellant insurance company states that the Claims Tribunal has erred in awarding compensation, even though the evidence on record substantially proves that the vehicle was not involved in the accident. She further submits that the claimants cannot be permitted to withdraw the amount as the appellant insurance company has good chance to succeed in the appeal.

6. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The records prima facie indicate that said Khanderao Phugat had expired as a result of the injuries sustained in the motor vehicular accident.

PW5 had lodged a complaint stating that Truck No. MH-15/CK-8982 had dashed against the motor cycle bearing registration no.MH-15/CE 6875, on which the deceased was a pillion rider.

7. The evidence of PW4 indicates that the said crime was registered against the driver of the offending vehicle. The said crime was investigated and chargesheet was filed against the driver of the said truck for the offence under Section 279 & 304A IPC. Thus, there is prima facie evidence on record to show the involvement of the said truck in the accident. The owner of the truck had not contested the proceedings and had not disputed the involvement of the said truck in the accident. The appellant insurance company had also not examined any witness.

8. Considering the above facts and circumstances, and also considering the reasons stated by the applicant in the application, I am inclined to allow part withdrawal of the compensation. Hence the following order:

(I) The applicants-original claimant nos.1 to 3 are allowed to withdraw Rs.60,000/- each with proportionate interest accrued

thereon. Suffice it to say that the withdrawal is subject to final outcome of the appeal.

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

6. The MACT, to re-invest the balance amount in the names of the respective applicants, in any nationalized bank after making the payment as stated above.

7. Civil application stands disposed of.

Prasanna
P.
Salgaonkar

Digitally signed
by Prasanna P.
Salgaonkar
Date:
2019.10.16
15:28:19
+0530

(ANUJA PRABHUDESSAI, J.)