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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3552 OF 2018
IN
FIRST APPEAL NO. 1333 OF 2017

Mr. Dnyanesh Tukaram Bhawari and another .....Applicants

V/s.

IFFICO Tokio General Insurance Co. Ltd. .....Respondent

Mrs. Sangeeti Salvi for the applicant
Mrs. Varsha Chavan for respondent

CORAM : K. K. TATED, J.

DATE : MARCH 15, 2019.

P.C.

Heard learned counsel for the parties.

2 By this Civil Application, applicant is seeking permission to withdraw 50% of amount deposited by the appellant Insurance Company.

3 The learned counsel for the applicant submis that in the

present proceedings, in an accident occurred on 02/01/2014, Radha Tukaram Bhawari expired. He was 54 years old and was earning Rs. 10,000/- per month. She submits that after considering evidence on record, Motor Accident Claims Tribunal at Thane, by Judgment and Award dated 31/08/2016 held that claimant is entitled to sum of Rs. 7,10,000/- with 8% per annum by way of compensation. She submits that being aggrieved by the said Award, appellant Insurance Company preferred First Appeal. They deposited entire awarded amount before Tribunal.

4 The learned counsel for the applicant submits that in similar matters, this Court, by an order dated 19/07/2018 (Coram: V. M. Deshpande, J.) being First Appeal No. 926 of 2017 permitted the claimants to withdraw 50% amount. She submits that on the basis of parity, applicant may be permitted to withdraw the amount.

5 On the other hand, the learned counsel for the appellant-Insurnace Company vehemently opposed the Civil Application. She submits that if applicant is permitted to withdraw amount, then it

will be very difficult for them to recover the amount, in case, appellant succeed in First Appeal. Therefore, there is no question of allowing present Civil Application.

6 Considering the submissions made by the learned counsel for the applicant, averments made in the Civil Application and considering earlier order dated 19/07/2018 in First Appeal No. 926 of 2017, I am satisfied that applicant has made out case for following order:

(I) Applicants are permitted to withdraw 50% of the amount deposited by the Insurance Company before the Court below on giving undertaking before the said Court that in the event, appeal filed by Insurance Company is allowed, then in that event, they will refund the amoung alongwith interest that can be determined by this Court at the time of final disposal of the appeal, within period of one and half months from the date of Judgment.

(II) Tribunal is directed to invest the remaining amount in fixed deposit in any nationalized bank, initially for the period of one year and same to be continued till further oders.

(III) Civil Application stands disposed of.

(IV) No order as to costs.

[K. K. TATED, J.]