IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2610 OF 2019
IN
FIRST APPEAL (ST.) NO. 17828 OF 2019

Reliance General Insurance Co. Ltd. ..... Applicant.

Vs.

Sunder Narayan Ganiga & Ors. ..... Respondents

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Ms. Shalini Shankar for the Applicant.

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CORAM : K.K.TATED, J.
DATED : JULY 23, 2019

P.C.

1. Not on board. At the request of advocate for the Applicant by praecipe dated 22nd July, 2019, matter is shown on production board.

2. The Learned Counsel for the Applicant submits that the Respondents/Original Claimants filed execution application for recovery of the entire amount. Hence, there is urgency.

3. By this Civil Application, the Applicant Insurance Company is seeking stay of the operation and implementation of the Judgment and award dated 2nd November, 2018 passed by the Motor Accident Claims Tribunal, Mumbai in Motor Accident Claim Petition No. 2838 of 2010 holding that the Respondents/Original Claimants are entitled compensation of Rs. 26,22,791/- with interest @ 7.5 % p.a.

4. The Learned Counsel for the Applicant submits that before the Trial Court the Applicant had raised an objection about the breach of policy. When this Court asked the Learned Counsel for the Applicant to show portion of the Judgment in which the Trial Court has discussed the issue raised by the Applicant, she is unable to show the same.

5. The Learned Counsel for the Applicant further submits that, the Tribunal awarded the compensation on higher side. She submits that if the entire amount is recovered, then nothing will survive in the present proceeding. She further submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award during the pendency of the present First Appeal. She submits that, she has received instructions from her client that, they are ready and willing to deposit the entire awarded amount in Tribunal within four weeks from today. The statement is accepted.

6. It is to be noted that in an accident which occurred on 27th June 2010, the Respondent/Original Claimant sustained injuries. After that he was admitted in Nanavati Hospital on 27th May, 2010 and was discharged on 4th July, 2010. At the time of accident, the Claimant was 22 years old. He was earning Rs. 6,000/- per month by serving with Bhavesh Shah Diamond Company, Mumbai. To show the disability, has examined Dr. Bhatjiwala and Dr. Dhara Bangera. They have issued

the certificates at Exh. 27 and 44 showing the permanent partial disability of the Claimant to the extent of 95 %. The Trial Court at the time of fixing the compensation payable to the Respondent/Claimant held the disability to the extend of 100% and awarded the sum of Rs. 26,22,791/- towards the compensation.

7. As there is delay on the part of the Applicant to file present appeal before this Court and considering the injuries sustained by the Respondent/Claimant, I am of the opinion that the Respondent/Claimant can be permitted to withdraw 50% of the awarded amount without furnishing any security but subject to outcome of the First Appeal. Hence, the following order is passed:

A. The Civil Application is allowed in terms of prayer clause (a) on a condition that the Applicant Insurance Company to deposit the entire awarded amount with interest in Tribunal on or before 31st August, 2019, failing which Civil Application shall stand dismissed without further reference to the Court. Prayer clause (a) reads thus:

> *"a) Pending the hearing and final disposal of the present first Appeal, this Hon'ble Court be pleased to stay the effect, implementation and or execution of the impugned Judgment and order dated 02/11/2018 passed by the Hon'ble Court of Member, in Motor Accident Claim Petition No. 2838 of 2010."*

B. If the amount is deposited within stipulated time as stated hereinabove, the Respondent/Claimant Mr. Sunder Narayan Ganiga is entitled to withdraw 50% amount with accrued interest without furnishing any security but subject to outcome of the First Appeal.

C. The Tribunal is directed to invest the remaining amount in a fixed deposit of any Nationalized Bank, initially for a period of one year which shall be renewed from time to time till further orders.

D. Liberty is granted to the Respondent/Original Claimant if he so desires, to file appropriate application for withdrawal of further amount and that will be decided on its own merits.

E. Civil Application stands disposed of accordingly.

(K.K.TATED, J.)