

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.4385/2018
with
First Appeal (ST) No.22967/2018

ICICI Lombard General
Insurance Co. Ltd.

..... Applicant

Vs.

Smt. Sundari Ana Parsekar & Ors.

..... Respondents

Ms. Pooja Singh a/w. Ms. Deepika Prabhala I/b. Res Juris for
the Appellant

Mr. S. W. Kulkarni with V. M. Desai for Respondent Nos.1 to
3.

CORAM: K.K.TATED, J.
DATED : SEPTEMBER 18, 2019

P.C.

1 Pursuant to the praecipe filed by the learned counsel
for the Applicant the matter is taken on production board.

2 Adv. Kulkarni states that he received instructions to
appear on behalf of Respondent Nos.1 to 3. He undertakes
to file vakalatnama within a week. Undertaking is accepted.

3 This Application is for condonation of 55 days delay in
preferring the appeal challenging the judgment and award
dated 20.02.2018 passed by the MACT, Sindhudurg at Oros
in MACP No.11/2016 holding tht the Respondent-Claimants
are entitled to sum of Rs.20,76,958/- by way of
compensation with interest @ 9% p.a.

4 The learned counsel for the Respondent submits that Respondent No.3 Kum. Manasvi Rama Parsekar is a minor. He submits that, he has filed certificate dated 18.09.2019 stating that the present compromise is in the interest of the minor. Hence, the same is taken on record and marked "X" for identification.

5 Both the counsel submit that the matter is settled out of court. They tendered Consent Terms dated 18.09.2019.

6 The Respondent Nos.1 and 2 entered into witness box. They admit the contents of the Consent Terms and execution thereof. Both the claimants submit that the terms of the Consent Terms dated 18.09.2019 are explained to them in vernacular. The Consent Terms are taken on record and marked "X1" for identification, which read thus:

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. (ST) 22967 OF 2018**

DISTRICT: SINDHUDURG

ICICI Lombard General Insurance Co. Ltd.)

Through its authorized representative)

Having its office at ICICI Lombard House, 414,)

Veer Sawarkar Marg, near Siddhi Vinayak Temple)

Prabhadevi, Mumbai - 400025

)....Appellant
(Ori. Opp.
Party No. 2)

VERSUS

1. Smt. Sundari Ana Parsekar,)
Age: 65 years., Occ – Nil)
2. Smt. Sunita Rama Parsekar,)
Age: 28 years., Occ - Household)
3. Kum. Mansavi Rama Parsekar,)
Age: 8 years., Occ – Student)
(Minor through natural Mother guardian))
All R/o Satarda, Tq: Savantwadi,)
District: Sindhudurg)
4. Sri. Krishna Laxman Madurkar)
Age: 30 years., Occ : Service)
R/o, Warchi Ali A/P Aros, Tq: Sawatwadi)
District - Sindhudurg)

.....Respondents
(Present
Respondent no. 1 to
3 being original
Applicants &
present Respondent
no. 4 being original
OP no. 1)

JOINT CONSENT TERMS**TO,**

**THE HON'BLE THE CHIEF JUSTICE AND
THE HON'BLE PUISNE JUDGES OF THE
HON'BLE HIGH COURT AT BOMBAY**

MOST RESPECTFULLY SHEWETH:

- 1) That (1) ICICI Lombard General Insurance Co. Ltd., the
Appellant (Original Opp. party no. 2) A N D (2) Mrs. Sundari

Parsekar Respondent No. 1, Mrs. Sunita Rama Parsekar, Kum. Mansavi Rama Parsekar (all original applicants) most respectfully and jointly submit as under:-

- a) That Respondent no. 1 to 3 had filed the claim application no. 11/2016 before the Motor Accident Claims Tribunal at Sindhudurg against the Respondent no. 4 herein and the present Appellant, for the grant of compensation on account of the death occurred in accident dated 16.11.2015 in a motor vehicular accident. That the Ld. Tribunal had decided the said claim petition and awarded compensation of Rs. 20,76,958/- whereby the Respondent no. 4 and the present Appellant /Insurer hereinabove were held liable jointly and severally to pay the original applicant, the said compensation amount along with 9 % interest.
- b) That in the meantime, the Respondent no. 1 to 3 had filed Darkhast /Execution proceedings no. 6/2018 for recovery of decretal amount granted as per judgment and award, dated 20.02.2018 against the Appellant/ Insurer & the same is pending before MACT, Mumbai. The present Appellant had preferred First Appeal (L) no. 22967 OF 2018 before the Hon'ble High Court challenging the said judgment passed by the Hon'ble

MACT, Sindhudurg in MACP no. 11/2016. The said First Appeal is pending for final disposal as on date.

- c) That the present Respondent no. 1 and 2 have come forward to settle the matter amicably out of the Court with the Appellant. That the Respondent no. 1 to 3 are ready and willing to accept an amount of Rs. 19,00,000/- (inclusive of NFL) as full and final settlement amount. Further, the Respondent no. 1 and 2 has already received amount of Rs. 50,000/- towards No fault liability.

2) THUS THE PARTIES TO THE CONSENT TERMS HEREBY AGREE AS FOLLOWS:

- a) That the Respondent No. 1 to 3 (original applicants and executants) undertake to withdraw Darkhast/Execution Application No. 6/2018 pending before the Motor Accident Claim Tribunal, Mumbai.
- b) That, neither the Respondent no. 1 nor the Respondent no. 2 & 3 shall claim any monies or file any proceedings/ suits/ any other litigation against the appellant in any court/tribunal/forums etc. for recovery of monies in respect of compensation which is the subject matter of MACP no. 11/2016 and Execution Application No. 6/2018.

3) IN VIEW OF THE AMICABLE SETTLEMENT BETWEEN THE PARTIES, THE APPELLANT PRAYS TO THIS HON'BLE

**COURT FOR PASSING SUITABLE ORDERS IN RESPECT OF
FOLLOWING :**

- a) That, the First Appeal (L) no. 22967/2018 be disposed off in terms of consent terms along with Civil Application No. 4385/2018 and Civil Application No. 4386 of 2018 pending before this Hon'ble Court.
- b) That the Respondent no. 1 to 3 may be allowed to withdraw the amount from with the Motor Accident Claims Tribunal , Sindhudurg from the settlement amount of Rs. 18,50,000/- in following proportion:
- i. $1/3^{\text{rd}}$ share of Rs. 18,50,000/- = Rs. 6,16,666/- may be allowed to be withdrawn by Respondent no. 1
 - ii. $1/3^{\text{rd}}$ share of Rs. 18,50,000/- = Rs. 6,16,666/- may be allowed to be withdrawn by Respondent no. 2
 - iii. $1/3^{\text{rd}}$ share of Rs. 18,50,000/- = Rs. 6,16,668/- shall not be withdrawn as the Respondent no. 3 is minor and may be permitted to be invested in fixed deposit of any nationalized bank till attaining majority.
- c) That, the Appellant be allowed to withdraw the balance amount lying with the Motor Accident Claim Tribunal, Sindhudurg, along with accrued proportionate interest, if any.

d) That, the Registrar of the Hon'ble High Court be directed to refund to the Appellant the amount deposited in this court towards statutory deposit of Rs. 25,000/- along with accrued interest, if any.

e) That, suitable order in respect of refund of court fees be passed.

Mumbai, dated this 18th day of September, 2019.

Res Juris
Advocate for Appellant

Respondent no. 1

**Respondent no. 2 for herself
& for Respondent no. 3**

Advocate for Respondent no. 1 to 3"

7 The First Appeal as well as the pending Civil Application/s stand disposed of in terms of the Consent Terms.

8 The Consent Terms shall be treated as part and parcel of the decree.

(K.K.TATED, J.)