IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4882 OF 2016
WITH
CIVIL APPLICATION NO. 4883 OF 2016
WITH
CIVIL APPLICATION NO. 2823 OF 2019
WITH
CIVIL APPLICATION NO. 778 OF 2018
IN
FIRST APPEAL (ST) NO. 34194 OF 2016

The HDFC Ergo General Insurance Co. Ltd. ..Appellant

v/s.

Master Siddanth Sanjay Jamsandekar
& Anr. ..Respondents

Mr. Abhijit Kulkarni for the Appellant/Applicant.
Ms. Varsha Chavan for the Respondent No.1 and for the applicant in CAF/778/2018.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 17th OCTOBER, 2019.

P.C.

CIVIL APPLICATION NO. 2823 OF 2019.

1. By Order dated 13.4.2017, four weeks time was granted to the appellants/applicants in Civil Application No. 4882 of 2016 to take

steps to serve the unserved respondent no.2. The appellant insurance company was put to notice that failure to comply with the said condition would result in dismissal of the appeal against the respondent no.2. Since the appellant insurance company did not take steps, the appeal was dismissed as against the respondent no.2 for non compliance of the conditional order.

2. The learned Counsel for the applicant submits that the applicants could not take steps to serve the respondent no.2 as his whereabouts were not known, and it was not possible to serve him either by RPAD or otherwise. He stated that application has already been filed to issue notice to the respondent no.2 by publication.

3. The previous notices issued to the respondent no.2 had returned unserved. In view of the statement made by the learned Counsel for the appellant that the present whereabouts of the respondent no.2 are not known , application is restored to the filed as against respondent no.2. Substituted service is permitted to respondent no.2.

4. Application is allowed in terms of prayer clauses (b) and (c).

CIVIL APPLICATION NO. 4882 OF 2016

5. Issue notice to the respondents, returnable on 12.12.2019.

CIVIL APPLICATION NO. 4883 OF 2016

6. The learned Counsel for the appellant states that the entire compensation as per the impugned judgment and award has been deposited before the Claims Tribunal. The said statement is not controverted by the learned Counsel for the respondent/original claimants.

7. In the light of the above, execution and implementation of the impugned judgment and award is stayed till disposal of the appeal.

8. Civil application stands disposed of.

CIVIL APPLICATION NO. 778 OF 2018

9. The applicant-original claimant has sought withdrawal of compensation deposited by the appellant insurance company, pursuant to the judgment and award passed by the Motor Accident

Claims Tribunal, Mumbai, in Application No.547 of 2010, wherein the Tribunal has awarded compensation of Rs.1,76,611/- with interest @ 9 % per anum from the date of petition till actual realization of the amount.

10. It is stated that the appellant has now attained majority. The appellant has completed his education and he needs money to meet his day to day expenses. Considering the said statement, and in view of the reasons stated in the application and the grounds raised in the appeal memo, the applicant is allowed to withdraws 50% of the compensation deposited by the appellant insurance company along with proportionate interest accrued thereon. Suffice it to say that withdrawal of the amount shall be subject to the final outcome of the appeal.

11. The applicant shall furnish an undertaking before the Tribunal that he will abide by the final orders that may be passed in this appeal.

12. The balance amount be reinvested in the name of the respective applicant, in any nationalized bank after making the payment as stated above.

13. Statutory amount, deposited before this Court be transferred to the Tribunal if not already transferred.

14. Civil application stands disposed of.

(ANUJA PRABHUDESSAI, J.)