

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL (ST) NO.26805 OF 2016
WITH
CIVIL APPLICATION NO. 4579 OF 2016
and
CIVIL APPLICATION NO. 4580 OF 2016
IN
FIRST APPEAL (ST) NO.26805 OF 2016

The Oriental Insurance Co. Ltd. ..Appellant

v/s.

Mr. Hemant Gangaram Kunchikurve
& Anr. ..Respondents

Ms. Poonam Mittal for the Appellant.
Mr. Satish Ghewde for the Respondent No.1

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 19th SEPTEMBER, 2019.**

P.C.

1. Ld. Counsel, Mr.Ghewde undertakes to file Vakalatnama on behalf of the respondent no.1. To be filed in the Registry in the course of the day.

2. The appellant Insurance Company has filed this appeal along

with an application for condonation of delay, challenging the judgment and award dated 11.3.16 passed by the MACT, Mumbai in Claims Application No. 509 of 2010. By the impugned judgment and award, the Claims Tribunal had awarded compensation of Rs.3,97,725/- with interest @ 9% per anum from the date of petition till actual realization.

3. With consent delay is condoned.
4. The learned Counsel for the applicant and the respondent no.1 (original claimant) state that the parties have settled the matter amicably. They have tendered the consent terms which read thus:

“1. The Respondent no.1 had filed application being M.A.C.P No.509 of 2010 under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal at Mumbai, claiming compensation in respect of injuries to himself, in a motor vehicular accident.

2. The claim petition was allowed vide judgment and award dated 11.3.2016 directing the appellant insurer to pay compensation to the tune of Rs.3,97,725/- inclusive of NFL,

with interest @ 9% per anum from the date of application.

3. The appellant insurer has preferred aforesaid First Appeal taking exception to the said judgment and the same is pending before this Honourable High Court.

4. During the pendency of the aforesaid appeal, th“1. The Respondent no.1 had filed application being M.A.C.P No.509 of 2010 under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal at Mumbai, claiming compensation in respect of injuries to himself, in a motor vehicular accident.

2. The claim petition was allowed vide judgment and award dated 11.3.2016 directing the appellant insurer to pay compensation to the tune of Rs.3,97,725/- inclusive of NFL, with interest @ 9% per anum from the date of application.

3. The appellant insurer has preferred aforesaid First Appeal taking exception to the said judgment and the same is pending before this Honourable High Court.

4. During the pendency of the aforesaid appeal, the appellant and the respondent no.1 had meetings for negotiations and settlement of dispute once for all wherein the parties have

reached to an amicable settlement out of the court. The respondent no.2 is a formal party being the owner of the Insured Vehicle.

5. The appellant has already deposited amount of Rs.5,77,890/- (Award Rs.3,97,725/- plus interest Rs.2,53,198/- minus TDS @ 10% plus cost Rs.2,287/- minus NFL Rs.25,000/- minus Rs.25,000/- deposited u/s. 173) with MACT Mumbai under protest.

6. The respondent no.1 are ready to accept Rs.4,70,000/- as full and final settlement (inclusive of NFL 25,000/- already paid). The respondent no.1 shall withdraw Rs.4,45,000/- and proportionate interest thereon.

7. The amount of Rs.25,000/- deposited under Section 173 of the Motor Vehicles Act, 1988 at the time of filing First Appeal by the appellant, along with accrued interest thereon shall be withdrawn by the respondent no.1.

8. The appellant Insurance company shall be allowed to withdraw the balance amount of Rs.1,07,890/- along with proportionate interest accrued thereon.

9. In view of the above, the impugned judgment and award

dated 11.3.2016 passed by the Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No.509 of 2010 stands modified and the claim of the original claimants stands fully satisfied. The Claim application filed by the respondent no.1 before the Tribunal as well as the aforesaid first appeal with civil applications therein filed by the present appellant stand disposed of in terms of the present consent terms.

10. The appellants shall be entitled to refund of Court fees paid in the Honourable High Court as per rules, along with accrued interest thereon.”

5. The consent terms are signed by the Assistant General Manager of the appellant -Insurance Company, by the respondent no.1, and by their respective Counsel. The Assistant Manager of the appellant - Insurance Company as well as the respondent no.1 are present before the Court. They have confirmed the contents of the terms and have stated that the same are agreeable to them. The Consent terms are taken on record and marked “X” for identification.

6. The appeal stands disposed of in view of the Consent terms

filed by the parties. Award drawn by the MACT Mumbai, in Claim Petition No. 509 of 2010 be modified accordingly.

7. Civil Application stands disposed of in view of disposal of the appeal.
8. Statutory deposit be transferred to the MACT, if not already transferred.

(ANUJA PRABHUDESSAI, J.)