

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

**FIRST APPEAL NO.976 OF 2018
WITH
CROSS OBJECTION (STAMP) NO.3699 OF 2018
IN
FIRST APPEAL NO.976 OF 2018**

IFFCO TOKIO General Insurance Co.
Ltd.

...Appellant

Versus

Yusuf Kasam Khan Dalwai and Ors.

...Respondents

...

Ms Varsha Chavan for the Appellant.

Ms Sangeeta Salvi for Respondent Nos. 1 and 2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 21ST SEPTEMBER, 2022.

P. C. :-

1. By this appeal under Section 166 of the Motor Vehicles Act, 1988, the Appellant -Insurance Company has challenged the impugned judgment dated 31/08/2016 passed by the M.A.C.T, Thane, in claim Petition No.198 of 2014. By the impugned judgment the Claims Tribunal allowed the Claim Petition filed by Respondent Nos.1 and 2 and awarded compensation of Rs.6,98,000/- with interest @ 8% p.a. from the date of the petition till final realization.

2. During the pendency of this appeal, the Appellant and Respondent Nos.1 and 2 - Claimants have entered into settlement. Learned counsel for the respective parties have placed on record the consent terms, which read thus:-

1. The Respondent No. 1 to 2 hereinabove had filed an application bearing Application No. 198 of 2014 under section 166 of the Motor Vehicles Act, 1988 for recovery of compensation against Respondent No.3 and the Appellants, before the Motor Accidents Claims Tribunal at Thane.
2. The deceased Khatija Yusuf Dalwai was travelling in ST Bus bearing No. MH-12-EF-6646. There was a head on collision between the said ST Bus and a truck bearing No. MH-04-H-6038 on Kalyan Nagar Highway. Khatija Yusuf Dalwai sustained fatal injuries on account of the impact. Her parents filed a claim for compensation before MACT, Thane against the owner and insurer of the motor truck for Rs. 100,000/-.
3. The Learned Member of the Tribunal, after going through the evidence, held that the appellant and Respondent No. 3 were jointly and severally liable to pay compensation of Rs. 6,98,000/- together with interest @ 8 % p.a. from the date of application till realization.

4. Being aggrieved by the said judgment and award dated 31st August, 2016 the Appellant filed an appeal before this Hon'ble High Court.
5. The appellant insurance company has deposited a sum of Rs. 9,05,392/- before MACT, Thane, pursuant to order dated 9th August 2017 passed by Her Ladyship Justice Mrs. Mridula Bhatkar.
6. The appellant insurance company has deposited a sum of Rs. 25,000/- before this Hon'ble Court pursuant to the provisions of section 173 of the M. V. Act, 1988.
7. The appellant insurance company has not adjusted the amount of Rs. 25,000/- deposited by it under para 5 above at the time of depositing the decretal amount.
8. The parties have now arrived at a settlement. It is agreed by and between the parties that out of Rs. 9,05,392/- deposited by the appellant insurance company, an amount of Rs. 50,000/- will be paid to appellant insurance company. The balance amount together with accumulated interest thereon will be paid to Respondent No. 1 and 2.
9. Rs. 25,000/- deposited by the Appellant in this Hon'ble Court being a pre-requisite under Section 173 of Motor Vehicles Act be refunded to the Appellant with interest, if any, accrued thereon after the said amount is transferred

to the Motor Accident Claims Tribunal at Thane.

10. The Respondent claimant agree that they shall not file any appeal or any other proceedings seeking enhancement of compensation as granted to them by MACT, Thane nor have they filed any appeal before this court. If they have filed an appeal, the same shall stand withdrawn by virtue of this consent terms. Cross Appeal XOB NO. 3699 of 2018 shall also stand withdrawn.

11. The Court Fees paid by the appellant while preferring First Appeal be refunded to the appellant as per rules in force.

12. The impugned Judgment and Award dated 31st August, 2016 passed by the Learned Motor Accident Claims Tribunal, Thane in M.A.C.T. Application No. 198 of 2014 shall stand modified to the above extent.

3. The consent terms are signed by the authorised officer of the Appellant-Insurance Company and by Dr. Kasam Yusuf Dalwai, the son and power of attorney of Respondent Nos.1 and 2 (original Claimants) and their respective counsel. The power of attorney is taken on record and marked 'X' for identification. The parties are present before the Court. They have identified their signatures and admitted the contents of the consent terms. Hence, the consent terms

are taken on record and marked 'X-1' for identification. The statement made in the consent terms is accepted as an undertaking to the Court.

4. The appeal stands disposed of in view of the consent terms filed by the parties.

5. Statutory deposit of Rs.25,000/- be transferred to M.A.C.T., Thane and be paid to the Appellant-Insurance Company along with interest accrued thereon.

6. Court fees, as permissible under the rules be refunded.

7. Out of Rs. 9,05,392/- deposited by the appellant insurance company, an amount of Rs. 50,000/- be paid to appellant insurance company. The balance amount together with accumulated interest thereon shall be paid to Respondent No. 1 and 2.

8. Cross objection is dismissed as withdrawn.

9. Pending application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)