IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2214 OF 2020
IN
FIRST APPEAL NO.1048 OF 2019

Ravindra Vinayak Khismatrao and Anr. …Applicants

Versus

Reliance General Insurance Company Ltd. ...Respondent

…..

Ms Rina Kundu for the Applicants.
Ms Varsha Chavan for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 6th JUNE, 2022.

P.C.:-

1. By the impugned judgment dated 22/09/2014, the Claims Tribunal has awarded to the Applicants compensation of Rs. 25,70,072/- with interest of 7% p.a. from the date of filing of petition till its realization. By order dated 11/04/2019 this Court had stayed the execution of the impugned judgment subject to deposit of the compensation. Pursuant to the said order the Appellant has deposited compensation before the Claims Tribunal.

2. By the present application, the Applicants, who are original

claimants have sought withdrawal of the compensation deposited by the Appellant Insurance Company.

3. Learned counsel for the Appellant-Insurance Company has opposed the application mainly on the ground that the cheque issued towards payment of premium was dishonoured much prior to the accident. She therefore claims that the Appellant-Insurance Company is not liable to indemnify the owner of the vehicle involved in the accident.

4. The impugned judgment reveals that the insurance cover note for the vehicle involved in the accident was valid from 29/11/2008 to 28/11/2008. The owner of the vehicle had issued cheque bearing No.096898 dated 25/11/2008 towards payment of policy premium. The defence of the Insurance Company was that the original cheque was lost in transit. Subsequently the cheque was deposited and was dishonoured.

5. Prima facie there is no material on record to indicate as to when the Appellant-Insurance Company had found the misplaced cheque. There is also no prima facie material on record to indicate

that the Appellant-Insurance Company had intimated to the insured that the cheque was lost and that the cheque which was subsequently found was deposited and dishonoured.

6. Considering the above facts and circumstances, prima facie the Appellant-Insurance Company cannot be absolved of its liability of indemnifying the insured. Having gone through the impugned judgment and also considering the grounds raised in the appeal memo, in my considered view Applicants /claimants are entitled to withdraw 50% of the compensation deposited by the Appellant-Insurance Company. Hence, the application is allowed. The Applicants /original Claimants are allowed to withdraw 50% of the compensation along with proportionate interest accrued thereon on furnishing an undertaking that they shall refund the amount with interest in the event the Appellant -Insurance Company succeeds in the appeal.

7. The application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)