

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

INTERIM APPLICATION NO. 2948 OF 2022
IN
FIRST APPEAL (st) NO. 22884 OF 2018

Smt. Sunita Vithu Joshi & Anr. ..Applicant

v/s.

The Manager,
Iffco Tokio General Insurance Co. Ltd. ..Respondents

Mr. Sujay Gangal a/w. Gaurav Gangal for the Applicants.
Mr. Advait Hattangadi h/f V.V.Parshurami for the Respondent Nos.1
Mr. Suchit Pandey i/b. Pandey & Co.for the Respondent

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 16th JUNE, 2022.**

P.C.

1. By this application, the Applicant has sought withdrawal of the compensation deposited by the Appellant Insurance Company pursuant to the Judgment and Award dated 25.09.2017 passed by the Claims Tribunal in MACP 77 of 2013.

2. By the impugned Award, the Claims Tribunal has awarded compensation of Rs.10,42,500/- with interest @ 7.5% per annum from the date of petition till final realization.

3. Learned Counsel for Appellant Insurance Company opposes the application on the ground that the vehicle was driven in breach of the terms and conditions of the policy. He, therefore, claims that the

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Appellant is not liable to indemnify the Insured. He further submits that the amount awarded is exorbitant.

4. The law is well settled that even in the case of breach of terms and conditions of the policy, the insurer is liable to satisfy the Award. In the event the Appellant Insurance Company succeeds in proving breach of the terms and conditions of the policy, the only order that can be passed in its favour is to repay the amount. Hence, Respondent Nos.2 and 3 cannot be deprived of the compensation.

5. Considering the reasons stated in the application, and the grounds stated in the memo of appeal, in my considered view, the Applicant/ Claimants, are entitled to withdraw 50% of the compensation along with proportionate interest accrued thereon.

6. Hence the Application is allowed. The Respondent Nos.2 and 3, Original Claimants are permitted to withdraw 50% of the compensation along with proportionate interest accrued thereon. Suffice it to say that the withdrawal is subject to final outcome of the appeal.

7. In the event the Appellant succeeds in the Appeal, the Original Claimants shall be liable to refund the amount with interest.

8. Application stands disposed of.

(ANUJA PRABHUDESSAI, J.)