

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.15405 OF 2023
IN
FIRST APPEAL (ST) NO. 15568 OF 2022

Dilip Ravindra Shelar & Anr. ...Applicant
Versus
United India Insurance Co. Ltd. ...Respondents

WITH
INTERIM APPLICATION NO. 19150 OF 2022
WITH
INTERIM APPLICATION NO. 19151 OF 2022
IN
FIRST APPEAL (ST) NO. 15568 OF 2022

United India Insurance Co. Ltd. ...Applicant
Versus
Dilip Ravindra Shelar & Anr. ...Respondents

Ms. Rina Kundu, for the Applicant.
Ms. Varsha Chavan for the Applicant in IA Nos. 19150 & 19151 of
2022.

CORAM : RAJESH S. PATIL, J.

DATED : 14th SEPTEMBER, 2023

P.C.:

INTERIM APPLICATION NO. 19150 OF 2022
IN
FIRST APPEAL (ST) NO. 15568 OF 2022

1. This Interim Application is filed for condoning the
delay in filing the First Appeal.

2. There is a delay of 15 days in filing the First Appeal. The learned counsel for the Respondents states that he has no objection in condoning the delay and the matter is taken up hearing immediately.

3. I have gone through the contents of the application and I am satisfied that the Appellant has made out a case to condone the delay. Hence, Application is allowed in terms of prayer clause (a).

4. The Interim Application No.19150 of 2022 is accordingly disposed of.

INTERIM APPLICATION NO. 19151 OF 2022
IN
FIRST APPEAL (ST) NO. 15568 OF 2022

1. This Interim Application is filed for seeking stay to the execution and implementation of impugned judgment and award dated 16 February 2022 passed by the Motor Accident Claims Tribunal (“**MACT**”), Alibaug in Motor Accident Claims Petition No. 249 of 2014.

2. By an order dated 19 April 2023 ad-interim relief was granted subject to the deposit of the entire awarded amount with interest. The learned advocate for the Appellant states that his client has deposited the entire awarded amount in MACT, Alibaug.

3. In view of the same, interim order passed on 19 April 2023 is hereby confirmed till the disposal of the First Appeal.

4. Interim Application No.19151 of 2022 is accordingly disposed of.

INTERIM APPLICATION NO. 15405 OF 2023

IN

FIRST APPEAL (ST) NO. 15568 OF 2022

1. This Interim Application is filed by the Applicant-Original Claimant for withdrawal of the amount deposited by the Original Appellant-insurance company, before the MACT, Alibaug.

2. It is the case of the Applicants' that Applicant No.1 has suffered disability to the extent of 30% due to unfortunate accident. Applicant No.1 is not in position to attend job on regular basis.

3. The learned advocate for the Applicant-Original Claimant states that Applicant No.1 be allowed to withdraw the entire deposited amount. The learned advocate for the insurance company has objected to withdrawal of this amount since there is a breach of terms and condition of the insurance policy. According to her, in the impugned Judgment, her client was able to prove that there was a breach. According to him, the Applicant can be allowed to withdraw a sum of Rs.3,00,000/- from the amount deposited in the MACT, Alibaug.

4. I have heard both the sides, no reply filed by the insurance company opposing this Application.

5. I have also gone through the contents of the Interim Application. The case is made out to grant the amount of Rs.3,00,000/- deposited by insurance company to Applicant No.1.

6. The decretal amount of Rs. 3,00,000/- awarded to Applicant No. 1 (Original Claimant) is allowed to be withdrawn, upon furnishing an undertaking before the concerned MACT to the effect that if they fail in this First Appeal, they will return the amount with interest, at such rate as may be directed by this Court at the time of disposal of the First Appeal.

7. Balance amount shall be invested in the fixed deposit of a nationalized bank initially for a period of one year and thereafter for like period depending upon the pendency of this Court.

8. The Interim Application No.15405 of 2023 is accordingly disposed of.

9. All the parties to act on an authenticated copy of this order. Issuance of certified copy of the order is expedited.

FIRST APPEAL (ST) NO. 15568 OF 2022

1. Ms. Kundu, waives service of notice for Respondent No.1 in First Appeal.

2. Issue notice to Respondent No.2, returnable after six weeks.
3. Hamdast is permitted.
4. Apart from the court notice, Advocate for Appellant is permitted to serve Respondent by Advocate's private notice, by all permissible means and file an Affidavit of service to that effect within six weeks from today.
5. Stand over to 26 October, 2023.

(RAJESH S. PATIL, J.)