IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO.1982 OF 2022
IN
FIRST APPEAL NO.725 OF 2022

National Insurance Co. Ltd., through its Regional Manager, Regional Office, Nagpur
Vs.
Jija wd/o Mahadeo Bawane and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. C. A. Anthony, Advocate for the appellant.
Mr. A. R. Rashi, Advocate for the respondent Nos.1 to 5.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/02/2023

1. By this application, appellant is seeking stay to the effect, operation, implementation and execution of the Judgment and Award dated 23.03.2022 passed by the Motor Accident Claims Tribunal, Nagpur in Claim Petition No.827/2018.

2. The amount is already deposited by the appellant. In view of that the effect, operation and implementation of the Judgment and Award passed by the Motor Accident Claims Tribunal, Nagpur in Claim Petition No.827/2018 be stayed till final disposal of the appeal.

Civil Application is disposed of.

Civil Application (CAF) No.559/2023

1. By this application, the original claimants are seeking permission for withdrawal of the amount on the ground that respondent No.1 is the widow,

respondent Nos.2 and 3 are the daughters and respondent Nos.4 and 5 are the parents of deceased Mahadeo Bawane. They have lost their earning hand in an accident and now they are in need of money for their day to day affairs, and therefore permission be granted to them to withdraw the amount.

2. The said application is strongly opposed by the learned Advocate Mr. Anthony for the appellant on the ground that, learned trial Court had not considered the defence of breach of policy. The driver of the vehicle was not holding valid driving licence. He submitted that now recently the Hon'ble Apex Court in the case of **Bajaj Alliance General Insurance Co. Ltd., Vs. Rambha Devi and others** reported in **2022 SCC OnLine SC 287** have taken different view and held that the principles laid down in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited, (2017) 14 SCC 663** needs to be revisited, and referred the matter to larger Bench. He submitted that in view of the observation of the Hon'ble Apex Court, the application deserves to be rejected and the amount deposited by the Insurance Company required to be secured as it is deposited before the Court.

3. Heard learned Advocate for the appellant as well as learned Advocate for the respondent Nos.1 to 5.

4. Admittedly, the respondents are the 3rd party. The issue is between the owner and the insurer, if the appellant is succeeds in proving the breach on the basis

of evidence adduced, then pay and recover order can be passed, after hearing of the First Appeal. At this stage, the original claimants cannot be deprived from getting the compensation amount. However, considering the objections raised, the respondent/claimants be permitted to withdraw 50% of the amount on imposing certain conditions. In view of that, I proceed to pass following order.

ORDER

(i) The Civil Application is allowed.

(ii) Respondent Nos.1 to 5 are permitted to withdraw 50% amount along with the accrued interest on furnishing surety.

(iii) Civil Application is disposed of.

First Appeal No.725/2022

Appellant to file paper book within four weeks.

(URMILA JOSHI-PHALKE, J.)

Sarkate