IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 10812 OF 2024
(for withdrawal of amount)
IN
FIRST APPEAL NO. 692 OF 2023

1. Smt. Renuka Moreshwar Dixit
2. Mast. Mihir Moreshwar Dixit
3. Smt. Anusaya Dattatraya Dixit
4. Shri Dattatray Rangnath Dixit .. Applicants

In the matter between :

Royal Sundaram General Insurance Co. Ltd. .. Appellant

Versus

1. Smt. Renuka Moreshwar Dixit
2. Mast. Mihir Moreshwar Dixit
3. Smt. Anusaya Dattatraya Dixit
4. Shri Dattatray Rangnath Dixit
5. Mr. Jaspalsingh Darshansingh Brar
6. Mrs. Sushma Balasaheb Dandawate
7. TATA AIG General Insurance Company Limited .. Respondents

Mr. Yogesh Pande, *for Applicants.*

Mr. Nikhil Mehta *i/b KMC Legal Venture, for Appellant-Royal Sundaram General Insurance Co. Ltd.*

Mr. Devendranath Joshi *a/w. Mr. Pradyumna Thakurdesai, for TATA AIG.*

CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.

Date : October 17, 2024

P. C.

1. The above Interim Application is filed by the Applicants (the Original Claimants before the Motor Accident Claims Tribunal, Pune) to allow them to withdraw the balance amount lying deposited in Motor Accident Claims Tribunal, Pune, ("***MACT***"), and which deposit was made by the Appellant-Insurance Company. The Applicant No.1 is the wife of Moreshwar Dattatraya Dixit ("***Moreshwar***"), who passed away in a vehicular accident. Applicant No. 2 is the son of Moreshwar and Applicant Nos. 3 and 4 are the parents of Moreshwar. According to the Applicants, Moreshwar was the occupant (and not the Driver) of one of the vehicles which were involved in the accident. One vehicle was a container truck bearing registration No. GJ-12-BV-5634 and which vehicle was insured by the Appellant-Insurance Company. The vehicle of which Moreshwar was the occupant, was a Tata Hexa Car bearing registration No. MH-14-GS-2529.

2. After the death of Moreshwar, the Applicants (the Original Claimants) approached the MACT at Pune seeking compensation. In that application, the Appellant-Insurance Company as well as Tata AIG General Insurance Company Limited ("***Tata AIG***") were joined as party Respondents. Tata AIG was the insurer of the vehicle Tata Hexa.

3. Be that as it may, the MACT heard the application filed by the Applicants herein and directed the Appellant-Insurance Company along with owner of the container truck to pay compensation of Rs. 2,47,63,200/- along with interest @ 7 % per annum payable from the date of the claim petition till realization of the entire amount. This order of the MACT is dated 21st January, 2023 and which is assailed in the above Appeal (First Appeal No. 692 of 2023).

4. The above appeal was admitted on 10th July, 2023. On 8th December, 2023, as a condition precedent for stay of the impugned order, the Appellant-Insurance Company was directed to deposit the entire amount in the trial Court. That deposit admittedly has been done. Thereafter, the Applicants herein filed Interim Application No. 15337 of 2023 seeking to withdraw 75% of the amount deposited. This Court, after hearing the parties, permitted the Applicants to withdraw 50% of the deposited amount along with interest thereon by giving an undertaking. This Court clarified that the withdrawal of 50% will follow the same methodology as stipulated in the impugned order. It is, in these circumstances, the present application is filed seeking to withdraw the balance amount deposited by the Appellant-Insurance Company before the trial Court.

5. We have heard the learned advocate appearing on behalf of the Applicants as well as the learned counsel appearing on behalf of the Appellant Insurance Company. We have also heard the learned advocate appearing on behalf of Tata AIG. We find, atleast *prima facie,* that the real dispute in the above appeal is with reference to, which Insurance Company should bare the liability. Though the impugned order exonerates Tata AIG, it is the case of the Appellant-Insurance Company that the vehicle insured by Tata AIG (Tata Hexa Car) was fully responsible for the accident. It is, therefore, the primary case of the Appellant-Insurance Company that the liability ought to have been foisted on Tata AIG and not on the Appellant Insurance Company. We must mention that there is also a ground raised in the above appeal regarding the quantum that the Claimants had not suffered any loss of income as Applicant No. 1 had been employed with a company called Cummins Technology Limited and was earning a sum of Rs. 21,000/- per month. In the said ground, it is contended by the Appellant Insurance Company that this amount ought to have been deducted from the alleged salary being earned by the deceased Moreshwar to arrive at the compensation payable to the Original Claimants. *Prima-facie,* we do not find that the Appellant Insurance Company would be justified in contending that the salary earned by the wife ought to be deducted from the salary of the deceased Moreshwar while computing the compensation payable for loss of

income. As mentioned earlier, the real dispute in the above appeal is between two insurance companies.

6. In these peculiar facts, we are of the opinion that even the balance 50% along with accrued interest thereon, can be permitted to be withdrawn by the Applicants herein. It is accordingly so ordered. This withdrawal will also follow the same methodology as stipulated in the impugned order and will be subject to the Applicants' filing undertakings on affidavit in this Court that in the event, the Applicants fail in the above appeal, they will bring back the amounts withdrawn by them, or any part thereof.

7. It is needless to clarify that all observations made in this order are only *prima facie* and will not bind the Court hearing the above appeal finally. We also make it clear that this order shall not in any way prejudice the right of the Appellant Insurance Company against Tata AIG (Respondent No.7 in the Appeal No. 692 of 2023).

8. The Interim Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

9. First Appeal No. 692 of 2023 be listed in due course.

10. We are informed that the Applicants herein have also filed cross objections being Cross Objection No. 14696 of 2024 seeking enhancement of the compensation awarded to them under the impugned order. We direct that along with First Appeal No. 692 of 2023, the cross objection shall also be tagged and listed.

11. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] **[B. P. COLABAWALLA, J.]**