

Bombay High Court

Sandip Prakash Raut And Ors vs Icici Lombard General Insurance ... on 24 January, 2023

Bench: Amit Borkar

17-fa721-2022.

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.721 OF 2022  
WITH  
INTERIM APPLICATION NO.10333 OF 2022

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ICICI Lombard General Insurance

Co. Ltd., Mumbai ... Appellant  
V/s.  
Sandip Prakash Raut & Ors. ... Respondents

WITH  
INTERIM APPLICATION NO.20164 OF 2022  
IN  
FIRST APPEAL NO.721 OF 2022

Sandip Prakash Raut & Ors. ... Applicants  
V/s.  
ICICI Lombard General Insurance  
Co. Ltd., Mumbai ... Respondent

Ms. Varsha Chavan for the appellant.  
Mr. J.J. Bardeskar for the respondent/applicants.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 24, 2023

P.C.:

CIVIL APPLICATION NO.20164 OF 2022:

1. The civil application is filed for withdrawal of amount of compensation granted by the Motor Accident Claims Tribunal. The Tribunal has directed the insurance company and owner to jointly and severally pay an amount of Rs.8,15,200/- along with interest 17-fa721-2022.doc at the rate of 9% per annum.
2. Against that award, the claimant has filed first appeal, so also the insurance company.
3. According to the claimant, the Tribunal could not have recorded finding of contributory negligence but it was a case of composite negligence. While it is the submission of the learned advocate for the insurance company that the Tribunal has recorded contradictory finding inasmuch as it has held the claimant to be a housewife but has also held the claimant to be running a mess.
4. Considering the aforesaid facts, the applicant has made out a case for withdrawal of compensation to the extent of 50%.
5. The civil application is partly allowed in terms of prayer clause (a), subject to the applicant filing an undertaking within eight weeks from today stating that in case the decision in the present first appeals are against the claimants, they shall reimburse the insurance company with the amount withdrawn along with interest at the prevalent bank rate.
6. Filing of paper-book in the claimant's appeal is dispensed with in view of the fact that the insurance company has filed private paper-book.
7. List first appeal on 21st February 2023.

(AMIT BORKAR, J.)