

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

**CIVIL APPLICATION NO.1542 OF 2015
IN
FIRST APPEAL NO.476 OF 2015**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Ms.Varsha Chavan for the applicant

CORAM : K.K.TATED, J.
DATED : 23/04/2015

PC:

1 Not on board. At the request of Advocate for the applicant, matter is taken on board for urgent orders.

2 The learned counsel for the applicant submits that the respondents claimants filed Execution Application No.4 of 2015 for recovery of awarded amount. She submits that if entire amount is recovered by the respondents claimants in Execution Application, nothing will survive in the present proceeding. Hence, there is urgency in the matter.

3 This application is preferred by Insurance Company for stay of the operation and implementation of the judgment and award dated 16.10.2014 passed by MACT, Kolhapur in MACP No.159 of 2011 holding that the claimants are

entitled sum of Rs.5,97,000/- with 8% interest p.a. by way of compensation.

4 The learned counsel for the applicant submits that on the date of accident, the driver of the offending vehicle was not holding a valid licence. She further submits that though the applicant has raised this specific plea in the written statement the Trial Court neither framed any issue nor considered the same. She further submits that in view of the breach of Insurance Policy, they are not liable to pay any compensation. She further submits that they have good chance of success in the present matter. She submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the judgment and award dated 16.10.2014 passed by MACT, Kolhapur in MACP No.159 of 2011.

5 The learned counsel for the applicant submits that she received instructions from the Insurance Company that they are ready and willing to deposit entire decretal amount in the Trial Court within four weeks from today. Statement is accepted.

6 In the present proceeding, in an accident which occurred on 25.2.2011 claimant no.1 lost her husband. Claimant no.2 to 4 are children of the deceased and Claimant no.5 is the mother of the deceased. On the date of accident, the

deceased was working as a driver.

7 Considering these facts and the income of the deceased, the tribunal held that the claimants are entitled sum of Rs.5,97,000/- by way of compensation. It is to be noted that though the Insurance Company has raised objection about the breach of policy the same is not appearing in the impugned judgment. Whether Insurance Company has raised objection at the time of hearing or not, that will be decided at the time of final hearing of First Appeal. Claimant nos.1 and 5 are entitled to withdraw some amount without furnishing any security.

8 Considering the submissions made by the learned counsel for the applicant, the averments made in Civil Application and as this order is passed without issuing notice to the respondents claimants, liberty granted to them to prefer appropriate application if they so desire for withdrawal of further amount and that application be decided on its own merits. Hence, following order:

a) Operation and implementation of the impugned judgment and award 16.10.2014 passed by MACT, Kolhapur in MACP No.159 of 2011 is stayed on the condition that applicant Insurance Company to deposit entire awarded amount including interest

and cost if any, in the Tribunal within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.

b) If amount is not deposited within stipulated time as stated hereinabove, respondents claimants are free to proceed with their Execution Application No.4 of 2015 for recovery of awarded amount as per rules and regulations.

c) If amount is deposited within stipulated time as stated hereinabove, claimant no.1, Sangeeta Anil Chavan is entitled to withdraw sum of Rs.75,000/- with accrued interest and claimant no.5, Hirabai Baburao Chavan is entitled to withdraw sum of Rs.75,000/- with accrued interest without furnishing any security but subject to outcome of First Appeal.

d) Tribunal is directed to invest remaining amount in fixed deposit of any nationalised bank initially for a period of one year and same be continued till the hearing and final disposal of the First Appeal.

e) Liberty granted to the respondents claimants to prefer appropriate application if they so desire for withdrawal of additional amount and that application be decided on its own merits.

f) The Registry of this Court is directed to transfer the sum of Rs.25000/- if any deposited by

the Insurance Company at the time of filing of First Appeal along with accrued interest to the Motor Accident Claims Tribunal, Nashik in the account of M.A.C.P. No. 159 of 2011.

g) Civil Application is disposed of accordingly.

(K.K.TATED, J.)