

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

**CIVIL APPLICATION NO.2324 OF 2015
IN
FIRST APPEAL NO.752 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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Mr.D.S.Joshi for the appellant

CORAM : K.K.TATED, J.
DATED : 14/07/2015

PC:

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

2 This applicant is preferred by Insurance Company for stay of the operation and implementation of the impugned judgment and award dated 12.12.2014 passed by MACT, Karad in MACP No.134 of 2012.

3 The learned counsel for the applicant submits that at the time of awarding sum of Rs.23,60,000/-, Tribunal has not considered contributory negligence on the part of deceased also. He further submits that Tribunal has awarded compensation on the higher side. He submits that they have good chance of success in the present proceeding. He submits that if stay is

not granted, respondents claimants can recover the entire decretal amount in Execution Application No.8 of 2015 and in that case, nothing will survive in the present proceeding. He submits that in the interest of Justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award dated 12.12.2014.

4 The learned counsel for the applicant further submits that he received instruction from the Insurance Company that they are ready and willing to deposit entire awarded amount interest and cost in the Tribunal within four weeks from today.

5 Statement is accepted.

6 In the present proceeding, in an accident which occurred on 16.4.2012 Sopan Ishwara Pawar died on the spot. At that time, he was 40 years old. He was running a tailoring shop at his village Gondi. He was also having income from milk and poultry business.

7 As per the claimants, the deceased used to earn Rs.20,000/- per month. On the basis of these facts, mother and widow of the deceased filed Claim Petition under section 166 of the Motor Vehicles Act claiming compensation of Rs.31,20,000/- with 9% interest p.a.

8 Considering the fact that widow has to maintain her two minor children as well as mother

in law, I am of the opinion that claimants are entitled to withdraw some amount without furnishing any security.

9 Considering the submissions made by the learned counsel for the applicant, the averments made in Civil Application, the impugned award dated 12.12.2014 and as the Insurance Company is ready and willing to deposit entire decretal amount in the Tribunal within four weeks from today, following order is passed:

(a) Operation and implementation of the judgment and award dated 12.12.2014 passed by MACT, Karad in MACP No.134 of 2012 is stayed on the condition that applicant to deposit entire decretal amount with interest and cost 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 entitled to proceed with Execution Notice no.8 of 2015 according to law for recovery of awarded amount.

(c) If amount is deposited within stipulated time as stated hereinabove, claimant no.1, Smt.Anusuya Ishwara Pawar is entitled to withdraw sum of Rs.1,00,000/- with accrued interest without furnishing any security but subject to outcome of

the First Appeal.

(d) Claimant no.2, Smt.Manisha Sopan Pawar is entitled to withdraw sum of Rs.5,00,000/- with accrued interest without furnishing any security but subject to outcome of the First Appeal.

(e) Rest of the amount be invested by the Tribunal 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.

(f) 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.

(g) Civil Application is disposed of accordingly.

(K.K.TATED, J.)