

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

**CIVIL APPLICATION NO.2567 OF 2015
IN
FIRST APPEAL (ST). NO.20746 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.Sanjeev Krishnan i/b Ms.Harshada Rane
for the applicant

CORAM : K.K.TATED, J.
DATED : 04/08/2015

PC:

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

2 This application is preferred by Insurance Company for stay of the operation and implementation of the impugned award dated 8.11.2014 passed by MACT, Kolhapur in MACP No.365 of 2012 by which the Tribunal awarded Rs.30,40,000/- with 8% p.a. by way of compensation.

3 The learned counsel for the applicant submits that the Tribunal erred in coming to the conclusion that the Insurance Company is liable to pay compensation even though they have placed on record the proof that on the date of accident,

driver of the offending vehicle was not holding valid licence. He submits that if there is breach of the terms and conditions of the Insurance Police, Insurance Company is not liable to pay compensation. He submits that the Tribunal has directed Insurance Company to pay compensation and recover the same from the owner which is contrary to the law declared by the Apex Court. He submits that they have good chance of success. He submits that if stay is not granted, irreparable loss and injury will be caused to the applicant.

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

5 Statement is accepted.

6 In the present proceeding in an accident which occurred on 19.4.2012 applicant no.1 lost her husband. On the date of accident he was 40 years old. He was dealing in the business of newspaper and use to deliver newspapers. As per the contention of the claimants he was earning more than 18,000/- per month.

7 Considering the fact that there is a delay on the part of Insurance Company to file the present First Appeal in this Hon'ble Court and as claimant no.1 is household wife, claimants nos.2 and 3 are

minors and claimant no.4 is mother of deceased who is Senior Citizen, I am of the opinion that claimants are entitled to withdraw some amount without furnishing any security. Hence, following order:

(a) Operation and implementation of the judgment and award dated 8.11.2014 passed by MACT, Kolhapur in MACP No.365 of 2012 is stayed till further orders on the condition that applicant to deposit entire awarded 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 Application for recovery of awarded amount according to law.

(c) If amount is deposited within stipulated time as stated hereinabove, claimant no.1, Smt.Geetanjali @ Namrata Rahul Chopade is entitled to withdraw sum of Rs.7,50,000/- with accrued interest without furnishing any security subject to outcome of the First Appeal.

(d) Claimant no.4, Smt.Mandakini Balasaheb Chopade is is entitled to withdraw sum of Rs.5,00,000/- with accrued interest without furnishing any security subject to outcome of the

First Appeal.

(e) Tribunal is directed to invest remaining amount in fixed deposit of any nationalised bank initially for a period of one and half 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 further amount and that application be decided on its own merits.

(g) Civil Application is disposed of accordingly.

(K.K.TATED, J.)