

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

**CIVIL APPLICATION NO. 2641 OF 2015
IN
FIRST APPEAL (ST.) NO. 20473 OF 2015**

The New India Assurance Co. Ltd. ... Applicant.
V/s.
Hemlata Kanhoba Salvi & Ors. ... Respondents

Mr. S. S. Jinsiwale for the applicant.

**CORAM : K. K. TATED, J.
DATED : 11/08/2015.**

PC.:

. 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 operation and implementation of the Judgment and Award dated 05.02.2015 passed by M.A.C.T. Kolhapur in M.A.C.P No. 875 of 2003 holding that respondents claimants are entitled to a sum of Rs.27,64,704/- with 8% interest per annum by way of compensation.

3 The learned Counsel for the applicant submits that the respondents claimants filed execution application No. 85 of 2015 for recovery of awarded amount. Hence, there is an urgency. The learned Counsel for the applicant submits that if entire amount is recovered by the respondents-claimants in execution application, nothing survives in the First Appeal.

4 The learned Counsel for the applicant submits that at the time of awarding compensation, the Tribunal has considered the future prospect of the deceased. He submits that the deceased was doing business in the name of Swadeshi Marketing and Retail Trading Company India Pvt. Ltd. He submits that the Trial Court failed to consider that the respondents-claimants have not brought on record the evidence to show the future prospect of the deceased in the business. He further submits that in any case the Tribunal has awarded compensation on higher side. He submits that they have good chance of success in the present matter. He submits that if entire amount is recovered by the respondents-claimants in execution application , nothing will survives in the First Appeal.

6 The learned Counsel for the insurance company submits that he received instructions from the insurance company that they are ready and willing to deposit entire awarded amount in Tribunal within four weeks from today. The statement is accepted.

7 In the present proceeding, the deceased Mr. Kanhoba Salavi was was doing business in the name of Swadeshi Marketing and Retail Trading Company India Pvt. Ltd. As per claimants, on the date of accident, the deceased was 45 years old and his monthly income was Rs.1,17,000/-.

8 Considering the fact that claimant no.1 widow who is housewife and respondent no.5 is Senior Citizen the mother of the deceased and as there is delay of 52 days in filing Appeal from Order, I am of the

opinion that both of them are entitled to withdraw some amount without furnishing any security, but subject to the outcome of the First Appeal.

9 Hence, the following order is passed:

ORDER

a) The operation and implementation of Award dated 05.02.2015 passed by the Motor Accident Claims Tribunal, Kolhapur in M.A.C.P No. 875 of 2003 is stayed till further orders on condition that applicant to deposit the entire awarded amount including interest within four weeks from today in the Tribunal, failing which civil application shall stand dismissed without referring back to the court .

b) If amount is not deposited within stipulated time as stated herein above, the respondents-claimants are entitled to proceed with execution application no. 85 of 2015 for recovery of awarded amount.

c) If amount is deposited within stipulated time as stated herein above, the claimant no.1 Hemlata Kanhoba Salavi is entitled to withdraw 25% amount of compensation with interest without furnishing any security but subject to the outcome of the First Appeal.

d) The respondent no.5 Smt. Parubai Maruti Salavi is entitled to withdraw 10% amount of compensation without furnishing

any security but subject to the outcome of the First Appeal.

e) The Tribunal is directed to invest the remaining amount in Fixed deposits of any Nationalised Bank, initially for the period of one and half year and same to be continued till hearing and final disposal of the First Appeal.

f) Liberty granted to the respondents claimants to take out appropriate application, if they so desire, for withdrawal of the further amount and that application will be decided on its own merits.

g) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)