

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

**CIVIL APPLICATION NO.2460 OF 2015
IN
FIRST APPEAL (ST). NO.1079 OF 2015**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Ms.Poonam Mittal for the applicant

CORAM : K.K.TATED, J.
DATED : 27/07/2015

PC:

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

2 This application is preferred by Insurance Company for stay of the operation and implementation of the award dated 30.8.2015 passed by 1st Labour Court in Application WCA No.297/B-51 of 2013 holding that the respondents claimants are entitled Rs.6,01,818/- with 12% interest p.a. by way of compensation.

3 The learned counsel for the applicant submits that the respondents claimants filed application for recovery of entire awarded amount. She submits that if entire amount is recovered by the claimants in Execution Application, nothing will survive in the present proceeding. She further

submits that the deceased was working as “Welder cum Labourer” with opposite party no.1. He was drawing Rs.8000 p.m. She submits that in the accident which occurred on 3.8.2011 husband of claimant no.1 Mohd. Munir Khan died. She submits that the muster roll of opposite party no.1 was produced before the court. She submits that the muster roll shows that on the date of accident, the deceased was shown as absent. She submits that these facts are recorded by the Trial Court in paragraph 13 of the impugned award. She submits that if the deceased was shown as absent in muster roll, there is no question of asking Insurance Company to pay the compensation. She submits that they have good chance of success in the present matter. She submits that if stay is not granted, irreparable loss and injury will be caused to the applicant.

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

5 Considering the submissions made by the learned counsel for the applicant and as applicants are ready and willing to deposit entire awarded amount in the Tribunal, I am satisfied that the

applicant has made out a case for allowing Civil Application.

6 In the present proceeding, husband of claimant no.1 Mohd. Munir Khan died in an accident which occurred on 3.8.2011. He was working with Opposite party No.1 as a “Welder cum Labourer”. On the date of accident, he was 39 years old. He was drawing Rs.8,000 per month. Though deceased was shown as absent in muster roll, police papers shows that accident occurred in factory premises of opposite no.1 when deceased was working. On the basis of these facts and as there is a delay on the part of the Insurance Company to file the present First Appeal, respondents claimants are entitled to withdraw some amount without furnishing any security. Hence, following order:

a) Operation and implementation of the impugned award dated 30.8.2014 passed by 1st Labour Court in Application WCA No.297/B-51 of 2013 is stayed in favour of applicant / Insurance Company 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, liberty granted to the

respondents claimants to proceed with Execution Application for recovery of awarded amount from opposite party according to law.

c) If amount is deposited within stipulated time as stated hereinabove, claimant no.1, Smt.Nazma Mohd. Munir Khan is entitled to withdraw sum of Rs.1,50,000/- with accrued interest without furnishing any security but subject to outcome of the First Appeal.

d) Claimant nos.2 and 3, Smt.Sharunnishan A. Tawab @ Tavvav and Shri Abdul Tawab @ Tavvav Mushiraja are also entitled to withdraw sum of Rs.75,000/- each with accrued interest without furnishing any security but subject to outcome of the First Appeal.

e) In the meanwhile, 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.

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.)