

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

**CIVIL APPLICATION NO.2407 OF 2015
IN
FIRST APPEAL NO.767 OF 2015**

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

Mr.S.M.Dange for the applicant

Mr.Jayesh Kocheta i/b Ms.Anjali A. Bhujbal for the respondent nos.1 and 2

CORAM : K.K.TATED, J.
DATED : 22/07/2015

PC:

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

2 Heard the learned counsel for the parties.

3 This application is preferred by Insurance Company for stay of the operation and implementation of the award dated 24.9.2014 passed by MACT, Pune in MACP No.359 of 2009 awarding Rs.19,41,000/- with 8% interest p.a.by way of compensation.

4 The learned counsel for the applicant submits that they deposited entire awarded amount in the Tribunal yesterday i.e. 21.7.2015. He submits that

if entire amount is withdrawn by the respondents claimants, nothing will survive in the present proceeding. Hence, there is urgency.

5 The learned counsel for the applicant submits that the Tribunal has not considered the issue raised by the Insurance Company about violation of terms and conditions of Insurance Policy. He submits that Insurance Company is not liable to pay compensation because of violation of terms and conditions of Insurance Policy. The learned counsel for the applicant further submits that the Tribunal has not considered contributory negligence at the time of awarding compensation. He further submits that in any case, Tribunal has awarded compensation on the higher side to the tune of Rs.19,41,000/-. He submits that they have good chance of success in the present proceeding.

6 The learned counsel for the applicant submits that in the interest of Justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned award dated 24.9.2014 passed by MACT, Pune in MACP No.359 of 2009 till the hearing and final disposal of the First Appeal. He submits that if stay is not granted, irreparable loss and injury will be caused to the applicant.

7 On the other hand, the learned counsel for the respondents claimants vehemently opposed the present Civil Application. He submits that the

applicant Insurance Company has not raised any objection before the Trial Court about violation of terms and conditions of the Insurance Policy. He submits that in an accident which occurred on 3.4.2002 claimant no.1 lost her husband Nandkishor @ Nandu Bhachandra Yadav. On the date of accident, he was 51 years old and was doing service at Baker Guages India Ltd. He was earning Rs.13,882/- per month. He submits that claimant no.1 have to maintain her minor child who is taking education. He submits that the applicant has not made out any case for stay of the impugned award passed by Tribunal.

8 I have heard both the sides at length. It is to be noted that in the present proceeding, Claimant no.2 is the minor. Claimant no.1 has to maintain herself as well as minor child. Considering these facts, I am of the opinion that at present, claimant no.1 is entitled to withdraw some amount with liberty to file appropriate application if they so desire for withdrawal of amount and that application be decided on its own merits. Hence, following order:

(a) Operation and implementation of the award dated 24.9.2014 passed by MACT, Pune in MACP No.359 of 2009 is stayed till the hearing and final disposal of the First Appeal.

(b) Claimant no.1, Smt.Padma Nandkishor @

Nandu Yadav, is entitled to withdraw sum of Rs.7,50,000/- without furnishing security but subject to outcome of the First Appeal.

(c) Liberty granted to the respondent claimant to prefer appropriate application if they so desire for withdrawal of additional amount and that application be decided on its own merits.

(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) Civil Application is disposed of accordingly.

(K.K.TATED, J.)