

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

**CIVIL APPLICATION NO.2144 OF 2015
IN
FIRST APPEAL (ST). NO.1846 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.Yogita Deshmukh i/b Mr.M.M.Sathaye for the applicant

CORAM : K.K.TATED, J.
DATED : 23/06/2015

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 judgment and award dated 15.1.2014 passed by MACT Raigad At Alibag in MACP No.503 of 2007 holding that the respondent claimant is entitled Rs.2,49,000/- with 7% interest by way of compensation.

3 The learned counsel for the applicant submits that respondent claimant filed Execution Application. She submits that if entire amount is recovered by the respondents claimants in

Execution Application, nothing will survive in the present proceeding. Hence, there is urgency.

4 The learned counsel for the applicant submits that the Tribunal erred in coming to the conclusion that Insurance Company is liable to pay compensation to the claimants. She submits that on the date of accident the deceased, Navsha Govind Waghmare was under the influence of liquor and because of his mistake the accident occurred. She further submits that the Trial Court has not considered contributory negligence at the time of deciding amount of compensation. She submits that they have good chance of success in the present proceeding.

5 The learned counsel for the applicant further submits that she received instruction from the applicant Insurance Company that they are ready and willing to deposit entire awarded amount with interest in the Tribunal within six weeks from today. Statement is accepted.

6 In the present proceeding, respondent claimant lost her husband in an accident which occurred on 12.8.2007. On the date of accident deceased was 39 years old and was earning Rs.3000/- to Rs.4000 per month. Considering these facts, Trial Court has awarded 2,49,000/- with 7% p.a.

7 I am of the opinion that the respondent claimant is entitled to withdraw 50% amount without furnishing any security subject to outcome of the First Appeal as the present Appeal is filed by the Insurance Company beyond period of limitation i.e. delay of 250 days. Hence, following order:

a) The operation and implementation of the impugned judgment and award dated 15.1.2014 passed by MACT, Raigad at Alibag in MACP No.503 of 2007 is stayed on condition that applicant Insurance Company to deposit entire awarded amount along with interest 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 execute the award according to law.

c) If amount is deposited within stipulated time as stated hereinabove, respondent claimant, Tambadi Navsha Waghmare is entitled to withdraw 50% amount without furnishing any security subject to outcome of First Appeal.

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) 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.

f) Civil Application is disposed of accordingly.

(K.K.TATED, J.)