

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

CIVIL APPLICATION NO.284 OF 2015

IN

FIRST APPEAL (ST). NO.1868 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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Ms.Deepika Putta i/b Mr.Asim S. Vidyarthi for
the applicant

CORAM : K.K.TATED, J.

DATED : 28/04/2015

PC:

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

2 The learned counsel for the applicant submits that the respondents claimants filed Execution Application for recovery of entire awarded amount as per judgment and award dated 17.7.2014 passed by MACT, Thane in MACP No.815 of 2010. He submits that if entire amount is recovered by the claimants in Execution Application, nothing will survive in the present proceeding.

3 The learned counsel for the applicant submits

that the Tribunal erred in coming to the conclusion that the respondents claimants are entitled for compensation of Rs.25,83,900/-. He submits that even the Trial Court has considered multiplier on the higher side. He submits that on the date of accident, the deceased was 44 years old. He submits that the claimants have not placed on record any documentary evidence to show that the deceased had a permanent service in any organisation.

4 The learned counsel for the applicant submits that they have good chance of success in the present matter. He submits that if stay is not granted, irreparable loss and injury will be caused to the applicant. He further submits that he received instruction from the applicant Insurance Company that they are ready and willing to deposit entire decretal amount in the Tribunal on or before 10.6.2015.

5 Statement is accepted.

6 Considering the submissions made by the learned counsel for the applicant and the averments made in Civil Application, I am satisfied that the applicant has made out a case for allowing Civil Application. At the same time, applicant has to deposit entire decretal amount with interest and cost in the Tribunal.

7 In the present proceeding, applicant no.1 lost her husband in an accident which occurred on 21.12.2009. On the date of accident the deceased was 44 years old. He was earning Rs.12000 per month as salary from service and Rs.53,893/- per annum from his business. On the basis of deceased income, respondents claimants filed claim application under section 166 of the Motor Vehicle Act, 1988 claiming total compensation to the tune of Rs.25.0 lacs.

8 Considering the reasons disclosed by the Tribunal at the time of awarding compensation in favour of respondents claimants, I am of the opinion that claimants are entitled to withdraw some amount without furnishing any security. Liberty also 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. Hence, following order:

a) Operation and implementation of the judgment and award dated 17.7.2014 passed by MACT, Thane in MACP No.815 of 2010 is stayed on the condition that applicant to deposit entire decretal amount with interest and cost in the Tribunal on or before 10.6.2015, 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 are entitled to execute the award according to law.

c) If the amount is deposited within stipulated time as stated hereinabove, respondents claimants are entitled to withdraw following amount without furnishing any security at present:

(i) Claimant no.1, Smt.Nirmala Pratap Giri is entitled to withdraw 10% amount with accrued interest without furnishing any security.

(ii) Claimant nos.2, 3 and 4, Priyanka Pratap Giri, Pratik Pratap Giri and Sonabai Chandrabhan Giri are entitled to withdraw 5% each with accrued interest without furnishing any security.

d) 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.

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 First Appeal.

f) Civil application stands disposed off accordingly.

(K.K.TATED, J.)