

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

**CIVIL APPLICATION NO.2463 OF 2015
IN
FIRST APPEAL (ST). NO.5596 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.Rahul Mehta i/b M/s.KMC Legal Venture
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 30.7.2014 passed by MACT, Mumbai in MACP No.3496 of 2008 holding that the respondents claimants are entitled Rs.5,22,101/- with 7.5% interest by way of compensation.

3 The learned counsel for the applicant submits that the respondent claimant filed Execution Application for recovery of awarded amount. He submits that if entire amount is recovered by the claimant 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 the claimant is entitled compensation of Rs.5,22,101/- with 7.5% interest p.a. He submits that the Tribunal has not considered contributory negligence at the time of deciding quantum of compensation. He submits that the Tribunal has considered multiplier on the higher side. He submits that it should have been 16 instead of 17. He further submits that the Tribunal has considered net income of the deceased @ Rs.4000 per month which is on higher side, it should have been Rs.3000/- per month. He submits that they have good chance of success in the present matter. He submits that if entire amount is recovered by the claimant in Execution Application nothing will survive in the present proceeding.

5 The learned counsel for the applicant Insurance Company submits that he received instruction from the Insurance Company that they are ready and willing to deposit entire amount in the Tribunal within four weeks from today.

6 Considering the submissions made by the learned counsel for the applicant, the averments made in Civil Application and as applicant made a statement that they 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.

7 In the present proceeding, in an accident which occurred on 29/9/2008, respondent claimant sustained injury. On that date, he was 20 years old and was working as cleaner on trailer No.CH-04-JA-8064. He was earning Rs.4,000/- per month by way of salary. Considering the injury sustained by respondent claimant, I am of the opinion that respondent claimant is entitled to withdraw some amount without furnishing any security. Hence, following order:

a) Operation and implementation of the impugned award dated dated 30.7.2014 passed by MACT, Mumbai in MACP No.3496 of 2008 is stayed 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, respondent claimant is entitled to execute award for recovery of awarded amount according to law.

c) If amount is deposited within stipulated time as stated hereinabove, respondent claimant is entitled to withdraw sum of Rs.2,00,000/- with

accrued interest without furnishing any security but subject to outcome of the First Appeal.

d) In the meanwhile, Tribunal is directed to invest remaining amount in fixed deposit of any nationalised bank initially for a period of one and half 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 further amount and that application be decided on its own merits.

f) Civil Application is disposed of accordingly.

(K.K.TATED, J.)