

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

**CIVIL APPLICATION NO.2666 OF 2015
IN
FIRST APPEAL NO.908 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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Mr.Shrikant M. Dange for the applicant

CORAM : K.K.TATED, J.
DATED : 12/08/2015

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 judgment and award dated 18.10.2014 passed by MACT, Pune in MACP No.754 of 2012 awarding sum of Rs.19,46,760 with 8% interest p.a. by way of compensation.

3 The learned counsel for the applicant submits that respondents claimants filed Execution Application No.113 of 2015 for recovery of entire awarded amount. He submits that if entire amount is recovered by the respondents claimants in Execution Application, nothing will survive in the present proceeding.

4 The learned counsel for the applicant submits

that the Tribunal erred in coming to the conclusion that at the time of calculating the compensation, 50% is required to be added towards the future income. He further submits that the Tribunal has awarded compensation on the higher side. He submits that they have good chance of success in the present matter.

5 The learned counsel for the Insurance Company submits that he received instruction that the Insurance Company is ready and willing to deposit entire awarded amount with interest and cost in the Tribunal within six weeks from today.

6 Statement is accepted.

7 In the present proceeding, in an accident which occurred on 4.5.2011, applicant no.1/claimant no.1 lost her husband Bapu Sopan Gaikwad. On that date he was 40 years old. Deceased studied upto 4th standard and he started his career as a Steel R.C.C.Fitter. He was working as a labour contractor. He used to work as a Steel R.C.C. Fitter with builder and developer. 5 to 10 labourers were working under the deceased. On the basis of these facts, claimants filed application under section 166 of the Motor Vehicles Act claiming compensation of Rs.20,00,000/-.

8 Considering the fact that claimant no.1, Mrs.Jayashree Bapu Gaikwad is household wife having three minor children and claimant no.2

mother of deceased, is Senior Citizen, I am of the opinion that respondents claimants are entitled to withdraw some amount at present without furnishing any security but subject to outcome of the First Appeal. Hence, following order is passed:

a) Operation and implementation of the judgment and award dated 18.10.2014 passed by MACT, Pune in MACP No.754 of 2012 is stayed on the condition that applicant to deposit entire decretal amount with interest and cost in the Tribunal within six 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 proceed with Execution Application No.113 of 2015 according to law.

(c) If amount is deposited within stipulated time as stated hereinabove, respondents claimants can withdraw following amount with accrued interest without furnishing any security subject to outcome of the First Appeal.

(i) Claimant No.1, Mrs.Jayashree Bapu Gaikwad-Rs.3,00,000/-

(ii) Claimant No.3, Miss Prajakta Bapu Gaikwad – Rs.2,00,000/-

(d) 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 respondents claimants 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.)