

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

**CIVIL APPLICATION NO.957 OF 2015
IN
FIRST APPEAL NO.280 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.Devendranath S. Joshi for the applicant

CORAM : K.K.TATED, J.
DATED : 01/07/2015

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 applicant.
- 3 This application is preferred by Insurance Company for stay of the operation and implementation of the impugned judgment and award dated 21.8.2013 passed by MACT, Mumbai in MACP No.928 of 2005 holding that the respondents claimants are entitled compensation.
- 4 The learned counsel for the applicant submits that respondents claimants filed Execution Application in Trial Court. Hence, there is urgency in the present matter. He submits that if entire

amount is recovered by the respondents claimants in Execution Application, nothing will survive in the present proceeding.

5 The learned counsel for the applicant submits that passengers were travelling as fare-paying passengers. Hence, Insurance Company is not liable to pay compensation as per the terms and conditions of Insurance Policy. In support of this contention he relies on the unreported judgment of this court in First Appeal No.1638 of 2013 in the matter of **New India Assurance Company Ltd. vs. Lilabai Shrimant Misal dated 7.7.2014**. He further submits that he received instruction from the Insurance Company that they are ready and willing to deposit entire awarded amount in the Tribunal within four weeks from today. Statement is accepted.

6 Considering the submissions made by the learned counsel for the applicant, the reasons disclosed in Civil Application and unreported judgment of this court in First Appeal No.1638 of 2013 in the matter of **New India Assurance Company Ltd. vs. Lilabai Shrimant Misal dated 7.7.2014**, I am satisfied that the applicant has made out a case for allowing Civil Application.

7 As this order is passed without issuing notice to the respondents, liberty granted to them to

prefer appropriate application if they so desire for withdrawal of the amount and that application will be decided on its own merits.

8 Hence, following order:

a) Operation and implementation of the judgment and award dated 21.8.2013 passed by MACT, Mumbai in MACP No.928 of 2005 is stayed on the condition that applicant to deposit entire awarded 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, respondents claimants are entitled to execute the award according to law.

(c) If amount is deposited within stipulated time as stated hereinabove, liberty granted to the respondents claimants to prefer appropriate application for withdrawal of amount and that application be decided on its own merits.

(d) Tribunal is directed to invest entire 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) The Registry of this Court is directed to transfer the statutory amount if any, deposited by

the Insurance Company at the time of filing of First Appeal along with accrued interest to the Motor Accident Claims Tribunal, Nashik in the account of M.A.C.P. No. 928 of 2005.

(f) Civil Application is disposed of accordingly.

(K.K.TATED, J.)