

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

**CIVIL APPLICATION NO.1738 OF 2015
IN
FIRST APPEAL (ST) NO.12005 OF 2015**

Shriram General Insurance Company Ltd. .. Applicant

vs.

Smt.Shalu Baban Nidbane and Ors. .. Respondents

Mr.Nikhil Mehta i/b M/s.KMC Legal Venture for the applicant

**CORAM : K.K.TATED, J.
DATED : 17/06/2015**

PC:

- 1 Heard the learned counsel for the applicant.
- 2 This application is preferred by Insurance Company for stay of the operation and implementation of the judgment and award dated 21.7.2014 passed by MACT, Thane in M.A.C.P. No.85 of 2010.
- 3 The learned counsel for the applicant submits that he received instruction from the Insurance Company that respondents claimants filed Execution Application for recovery of awarded amount. He submits that if entire awarded 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 in the present proceeding, initially, the Tribunal passed Award dated 21.7.2014

holding that the claimants are entitled compensation of Rs.6,24,000/- with 7.5% interest p.a. He submits that thereafter the claimants preferred Review Application No.71 of 2014. In that Review Application, the Tribunal awarded additional compensation of Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and also Rs.25,000/- towards loss of estate. He further submits that the Tribunal also awarded compensation on account of future prospects. He submits that in view of subsequent order in Review Application, Tribunal held that the claimants are entitled Rs.10,14,000/- by way of total compensation. He submits that the Tribunal has no jurisdiction to pass order for additional compensation in Review Application. In any case, the Tribunal erred in awarding the future prospect income @ 50% and also funeral and other expenses. He further submits that the Tribunal has not considered the contributory negligence at the time of passing impugned order. He submits that on the facts and circumstances of the present case, the Tribunal ought to have held that the deceased must have contributed 50% negligence for accident. Hence, the judgment and award passed by the Tribunal is required to be set aside. He submits that he received instruction from the applicant that they are ready and willing to deposit entire awarded amount in the Tribunal within a period of four weeks from today. Statement is accepted.

5 In the present proceeding, in an accident which occurred on 30.12.2009 claimant no.1 lost her husband who was 46 years at the time of accident. Considering the fact that claimant no.1 has to maintain her four minor children, I am of the opinion that at present claimant no.1, Shalu Baban Nidbane is entitled to withdraw sum of

Rs.3,12,000/- with accrued interest without furnishing any security.
Hence, following order:

- a) Operation and implementation of the judgment and award dated 21.7.2014 passed by MACT, Thane in MACP No.85 of 2010 and order dated 18.11.2014 in Review Application No.71 of 2014 passed by MACT Thane is stayed on the condition that applicant Insurance Company have 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, original claimant no.1, Shalu Baban Nidbane is entitled to withdraw sum of Rs.3,12,000/- with accrued interest for herself and on behalf of other claimants without furnishing any security but subject to outcome of the 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 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.)