

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

**CIVIL APPLICATION NO.385 OF 2015
IN
FIRST APPEAL NO.146 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 : 25/02/2015

PC:

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

2 The learned counsel for the applicant submits that in the present proceeding the Tribunal by judgment and award dated 28.08.2013 awarded sum of Rs.9,23,128/- with 6% interest p.a. by way of compensation to the respondent original claimants.

3 He submits that the respondent claimants filed Execution Application No.10 of 2015 for recovery of entire amount. He submits that if the entire amount is withdrawn by the respondent claimant in Execution Application No.10 of 2015, nothing

will survive in the present proceeding.

4 The learned counsel for the applicant submits that in the present proceeding, the Tribunal erred in coming to the conclusion that the Insurance Company is liable to pay compensation though it was specifically brought on record that the driver of the offending vehicle was not holding license on the date of accident. He further submits that the Tribunal has awarded compensation on higher side. He submits that they have good chance of success in the present proceeding. Hence, in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the award dated 28.8.2013 till the hearing and final disposal of the present First Appeal.

5 The learned counsel for the applicant submits that the Insurance Company is ready and willing to deposit entire decretal amount in the Tribunal within four weeks from today.

6 Statement is accepted.

7 It is to be noted that in the present proceeding, respondent no.1 lost her husband in an accident which occurred on 19.12.2010. On the date of accident, the deceased was 42 years old. He was serving as a Security Guard in Ashoka Group and earning about Rs.6500/- per month. Claimant no.3 was a minor on the date of accident.

Claimants filed compensation application under section 166 of the Motor Vehicles Act claiming compensation of Rs.10,00,000/-. The Tribunal considering the evidence on record awarded Rs.9,23,128/- with 6% interest p.a. by way of compensation. Considering these facts, I am of the opinion that the claimant nos.1 and 2 are entitled to withdraw some amount without furnishing any security. Hence, following order:

(a) Operation and implementation of the judgment and award dated 28.8.2013 passed by MACT, Nasik in MACP No.265 of 2011 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, respondents claimants are entitled to execute the award according to law.

(c) If amount is deposited within stipulated time as stated hereinabove, claimant no.1, Mirabai Rajendra Khairnar is entitled to withdraw sum of Rs.1,00,000/- with accrued interest without furnishing any security.

(d) Claimant no.2, Gourav Rajendra Khairnar is

entitled to withdraw sum of Rs.25,000/- with accrued interest without furnishing any security.

(e) Rest of the amount be invested by the Tribunal 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.

(f) Liberty granted to the respondent claimant to prefer appropriate application if they so desire for withdrawal of additional amount and that application be decided on its own merits.

(g) The Registry of this Court is directed to transfer the sum of Rs.25000/- 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. 265 of 2011.

(h) Civil Application is disposed of accordingly.

(K.K.TATED, J.)