

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

**CIVIL APPLICATION NO.2565 OF 2015
IN
FIRST APPEAL (ST). NO.14190 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.Sanjiv Krishnan i/b Ms.Harshada Rane for
the applicant

CORAM : K.K.TATED, J.
DATED : 04/08/2015

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 operation and implementation of the impugned award dated 8.11.2014 passed by MACT, Kolhapur in MACP No.251 of 2012 by which the Tribunal awarded Rs.36,50,400/- with 7.5% p.a. by way of compensation.

3 The learned counsel for the applicant submits that the respondents claimants filed Execution Application No.58 of 2015. 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 has awarded compensation on higher side. He further submits that the Tribunal has not considered contributory negligence at the time of awarding compensation. He further submits that the Tribunal has not considered Apex Court judgment in the matter of *Sarla Verma and Others vs. Delhi Transport Corporation & Anr.*¹ He submits that the Tribunal ought to have deducted 1/3rd amount from the total compensation as per judgment of the Apex Court in the matter of *Sarla Verma and Others vs. Delhi Transport Corporation & Anr. (Supra)*. He further submits that they have good chance of success in the present proceeding.

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

6 Statement is accepted.

7 In the present proceeding in an accident which occurred on 18.3.2012 claimant no.1 lost her husband Arun Mahadev Kore. On the date of accident he was 47 years old. He was running medical shop namely Yashoda Medicals in the premises of the Hospital known as Mali Hospital. At that time, the deceased was earning Rs.22500 per month. On the basis of these facts, respondent

¹ AIR 2009 SC 3104

claimant filed application under section 166 of the Motor Vehicles Act for compensation of Rs.42,00,000/-.

8 Considering the fact that claimant no.1, Mrs.Suvarna Arun Kore is housewife, claimant no.2, Akshay Arun Kore is taking education and as there is a delay on the part of Insurance Company in filing First Appeal, I am of the opinion that both of them are entitled to withdraw some amount without furnishing any security. Hence, following order:

(a) Operation and implementation of the judgment and award dated 8.11.2014 passed by MACT, Kolhapur in MACP No.251 of 2012 is stayed till further orders 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 proceed with Execution Application No.58 of 2014 for recovery of awarded amount according to law.

(c) If amount is deposited within stipulated time as stated hereinabove, claimant no.1, Mrs.Suvarna Arun Kore and claimant no.2, Akshay Arun Kore

are entitled to withdraw sum of Rs.5,00,000/- each with accrued interest without furnishing any security 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 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.)