

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

**CIVIL APPLICATION NO.2410 OF 2015
IN
FIRST APPEAL (ST). NO.17410 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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Ms.Yogita Deshmukh i/b Mr.M.M.Sathaye for the applicant

CORAM : K.K.TATED, J.
DATED : 22/07/2015

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 award dated 28.2.2015 passed by 6th Labour Court, Mumbai in Application (WCA) No.83/B-17 of 2014 by which the Trial Court held that the respondents claimants are entitled to sum of Rs.7,50,862/- with 12% interest by way of compensation.
- 4 The learned counsel for the applicant submits that they already deposited entire awarded amount in the Tribunal. Statement is accepted.

5 The learned counsel for the applicant submits that respondents claimants filed Execution Application for recovery of entire amount. She submits that if entire amount is recovered, nothing will survive in the present proceeding. Hence, there is urgency.

6 The learned counsel for the applicant submits that the Trial Court erred in coming to the conclusion that the claimants proved employer and employee relationship in the present proceeding. In the present proceeding, the deceased respondent Rishiraj Shobhnath Mishra did not die because of accident but because of murder. She further submits that even the claimant has not placed on record any cogent evidence to show that the deceased was earning Rs.10,000/- per month by way of salary. She submits that they have good chance of success in the present proceeding. She submits that if entire amount is recovered by the claimant in Execution Application, nothing will survive in the present proceeding. She submits that in the interest of Justice, this Hon'ble Court be pleased to stay of the operation and implementation of the award dated 28.2.2015 passed by 6th Labour Court, Mumbai in Application (WCA) No.83/B-17 of 2014.

7 In the present proceeding, late Rishiraj Shobhnath Mishra was on duty on 4/10/2013 as a

Driver of motor car / taxi vehicle no. MH/01/BD/1251 and while on the way of Kalyan-shil Road, some unknown persons have attacked upon him in which he was seriously injured and therefore, he was admitted in hospital from 4/10/2013 to 6/10/2013. He died in the hospital. Hence, the claimants i.e. wife of deceased and minor children filed application for compensation under the Employees Compensation Act, 1923.

8 Considering the fact that claimant no.1 lost her husband and she is household wife and she has to maintain three minor children, I am of the opinion that claimant no.1 is entitled to withdraw some amount without furnishing any security. Hence, following order:

- a) Operation and implementation of the award dated 28.2.2015 passed by 6th Labour Court, Mumbai in Application (WCA) No.83/B-17 of 2014 is stayed till further orders.
- b) Original claimant no.1, Neeta Rishiraj Mishra is entitled to withdraw sum of Rs.3,50,000/- without furnishing any security but subject to outcome of the First Appeal.
- c) 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.
- 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 First Appeal.

e) Civil Application is disposed of accordingly.

(K.K.TATED, J.)