

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

CIVIL APPLICATION NO.2362 OF 2015

IN

FIRST APPEAL (ST) NO.17677 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.Deepika Motagi i/b M/s.Res Juris for the applicant

CORAM : K.K.TATED, J.
DATED : 17/07/2015

PC:

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

2 This application is for stay of the operation and implementation of the award dated 6.1.2015 passed by MACT, Nasik in MACP No.905 of 2012 by which the Tribunal held that the respondent claimants are entitled Rs.6,57,600/- with 6% interest p.a. by way of compensation.

3 The learned counsel for the applicant submits that the respondent claimants filed Execution Application No.86 of 2015. She submits that if entire amount is recovered by the 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 the higher side. She further submits that on the date of accident 16.12.2011 Insurance Policy was not in force. She further submits that though the claimants stated in their Civil Application that the deceased was drawing Rs.10,000/- per month by way of salary, not a single document was placed on record to show salary of deceased. She submits that they have good chance of success in the present matter.

5 The learned counsel for the applicant submits that she received instructions from the Insurance Company that they are ready and willing to deposit entire decretal amount with interest in the Tribunal within four weeks. Statement is accepted.

6 The learned counsel for the applicant submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the award dated 6.1.2015 passed by MACT, Nasik in MACP No.905 of 2012 till further orders.

7 In the present proceeding, in an accident which occurred on 16.12.2011 Nitin Eknath Khairnar aged about 42 years old died on the spot. He was working as a Hotel Manager and drawing Rs.10,000/- per month.

8 On the basis of these facts, respondents claimants filed application under section 166 of the Motor Vehicles Act. Claimant no.1 is his wife of deceased, Claimant nos.2 and 3 are minor children of deceased and claimant no.4 is mother of deceased.

9 Considering the fact that claimant no.1 has to maintain her two minor children as well as mother in law who is Senior Citizen, I am of the opinion that claimants are entitled to withdraw some amount without furnishing any security subject to outcome of the First Appeal. Hence, following order:

(a) Operation and implementation of the judgment and award dated 6.1.2015 passed by MACT, Nasik in MACP No.904 of 2012 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 proceed with their Execution Application No.86 of 2015 for recovery of awarded amount.

(c) If amount is deposited within stipulated time

as stated hereinabove, Claimant no.1, Neha Nitin Khairnar and Claimant no.4, Pushpavati Eknath Khairnar, both of them are entitled to withdraw 20% each of compensation 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 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 additional amount and that application be decided on its own merits.

(f) Civil Application is disposed of accordingly.

(K.K.TATED, J.)