

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

CIVIL APPLICATION NO.2606 OF 2015

IN

FIRST APPEAL (ST) NO.20211 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.Nikhil Mehta i/b M/s.KMC Legal Venture
for the applicant

CORAM : K.K.TATED, J.

DATED : 12/08/2015

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 award dated 9.2.2015 passed by Commissioner for Workmen's Compensation and Judge, Second Labour Court, Thane in Application (WCA) No.302/C-78/2010 holding that respondents claimants are entitled sum of Rs.6,45,835.68 with 12% p.a. by way of compensation.
- 3 The learned counsel for the applicant submits that respondents claimants filed Execution Application before the Trial Court. He submits that if entire amount is recovered by the respondents

claimants in Execution Application, nothing will survive in the present proceeding. Hence, there is urgency.

4 The learned counsel for the applicant submits that in an accident which occurred on 12.8.2010 respondents claimant sustained injury. At that time, he was working as a Driver with respondent no.2. He submits that the respondent no.2 filed written statement before the Trial Court. He submits that respondent no.2 in Trial Court specifically denied the relationship of employer and employee between the claimant and him. He submits that claimant has not placed on record any cogent evidence to show that he was working with respondent no.2 as a Driver. He further submits that Trial Court erred in coming to the conclusion that the respondent claimant proved the disability to the extent of 63% on the basis of evidence of defendant no.2. He submits that the compensation awarded by the Trial Court is on higher side.

5 The learned counsel for the applicant submits that in the interest of Justice, this Hon'ble Court be pleased to stay the award dated 9.2.2015. He submits that he received instruction from the Insurance Company that they are ready and willing to deposit entire awarded amount in the Tribunal within four weeks.

6 Statement is accepted.

7 In the present proceeding, respondents claimants sustained 63% disability as held by the Trial Court in paragraph 18 of the impugned judgment. Considering the fact that claimant was working as a driver and he suffered disability to the extent of 63% in view of the accident which occurred on 12.8.2010, I am of the opinion that claimant is entitled to withdraw some amount without furnishing any security. Hence, following order:

(a) Operation and implementation of the judgment and award 9.2.2015 passed by Commissioner for Workmen's Compensation and Judge, Second Labour Court, Thane in Application (WCA) No.302/C-78/2010 is stayed on the condition that applicant to deposit entire awarded amount with interest and cost in the Trial Court 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 for recovery of entire awarded amount.

(c) If amount is deposited within stipulated time as stated hereinabove, respondent claimant, Chandrika Bhardwaj is entitled to withdraw sum of Rs.2,00,000/- with accrued interest without

furnishing any security subject to outcome of the First Appeal.

(d) Liberty granted respondents claimants to prefer appropriate application if they so desire for withdrawal of further amount and that application be decided on its own merits.

(e) In the meanwhile, Labour Court is directed to invest entire amount in Fixed Deposit of any nationalised bank initially for a period of one year and half year and same be continued till the further orders.

(f) Civil Application is disposed of accordingly.

(K.K.TATED, J.)