

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

**CIVIL APPLICATION NO.237 OF 2014
IN
FIRST APPEAL (ST) NO.22016 OF 2013**

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

Mr.Bharat Gadavi i/b Mr.Tejesh Dande and Associate for the respondent no.3

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

PC:

- 1 Heard the learned counsel for the applicant and respondent no.3.
- 2 This application is preferred by Insurance Company for stay of the operation and implementation of the award dated 18.12.2013 passed by Learned Judge, Labour Court, Mahad in Application (WCA) no.10/B-8/2011 awarding Rs.4,36,940/- with 12% interest p.a. by way of compensation.
- 3 The learned counsel for the applicant submits that they already deposited entire awarded amount in the Tribunal.
- 4 Statement is accepted.

5 The learned counsel for the applicant makes a statement that till today, respondents claimants have not withdrawn the amount. That statement is also accepted.

6 The learned counsel for the applicant submits that if entire amount is withdrawn by the claimants, nothing will survive in the present proceeding. He submits that the Labour Court failed to appreciate that the claimants failed to prove employer-employee relationship. He submits that for want of proof of employer-employee relationship, Insurance Company is not liable to pay any compensation. He further submits that in the present proceeding, the accident occurred on 7.3.2010 and after five months Santosh Vankati Gangane died. Therefore, there is no question of accident as a cause of death of the said Santosh. He submits that these facts are not considered by the Labour Court at the time of awarding compensation. He submits that in the interest of Justice, this Hon'ble Court be pleased to restrain the respondents claimants from withdrawing the amount deposited by them during the pendency of the present First Appeal.

7 I have heard both the sides at length. It is to be noted that in the present proceeding, the deceased was hospitalised for the period of more than five months 7.3.2010 till 7.8.2010. Claim

Petition was filed by with widow and daughter under Employees Compensation Act, 1923. Claimant no.1 is household wife.

8 Considering these facts, I am of the opinion that both the claimants are entitled to withdraw 25% amount without furnishing any security with liberty to prefer appropriate application if they so desire, for withdrawal of further amount and that application be decided on its own merits.

9 Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application.

(a) Operation and implementation of the award dated 18.12.2012 passed by Commissioner for Workmen's Compensation and Judge, Labour Court at Mahad in Application (WCA) No.10/B-8 of 2011 is stayed till further orders.

(b) Claimant Tolanbai Vankati Gangane and Sushma Vankati Gangane are entitled to withdraw 25% compensation each with accrued interest without furnishing any security subject to the 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) In the meanwhile, Labour Court 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) Civil Application is disposed of accordingly.

(K.K.TATED, J.)