

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

**CIVIL APPLICATION NO. 3523 OF 2015
IN
FIRST APPEAL (ST). NO. 21945 OF 2015**

United India Insurance Co. Ltd.

E- Ward, Kolhapur

... Applicant.

V/s.

Amol Jaykumar Patil & Ors.

... Respondents

Mr. Ketan Joshi for the applicant.

CORAM : K. K. TATED, J.

DATED : 15/10/2015.

PC.:

. Not on board. At the request of learned Counsel for the applicant, matter is taken on board for urgent order.

2 The learned Counsel for the applicant submits that the respondent claimant filed execution application bearing no. 111 of 2015 for recovery of entire awarded amount. He submits that if entire amount is recovered by the respondent claimant, nothing will survive in the present proceeding. Hence, there is urgency in the present matter.

3 This application is preferred by insurance company for stay of operation and implementation of Award dated 17.01.2015 passed by the Motor Accident Claims Tribunal, Kolhapur in M.A.C.P. No. 14 of 2009 by which the Tribunal held that the respondent claimant is entitled to sum of Rs.4,66,708/- with 7% interest per annum by way of

compensation.

4 The learned Counsel for the applicant submits that the respondent claimant has filed compensation application under Section 163A of the Motor Vehicle Act 1988. He submits that if the application is filed under Section 163A of M.V. Act, there is Cap in awarding medical expenses. He submits that the Tribunal has awarded Rs.2,63,108/- towards the medical expenses which is beyond the Cap prescribed by Schedule II. He submits that the Tribunal has awarded sum of Rs.20,000/- for pains, sufferings, traveling etc. which is contrary to the Schedule II as prescribed in Section 163A of M.V. Act. He submits that Cap is only Rs.10,000/- Hence, they have good chance of success in the present matter.

5 The learned counsel for the applicant submits that if stay is not granted, the respondent claimant may recover the entire awarded amount in the execution application. In that case, it will be very difficult for them to recover the entire amount from the respondent claimant, if they succeed in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the Award dated 17.01.2015 passed by the M.A.C.T. Kolhapur in M.A.C.P. No. 14 of 2009 till the hearing and final disposal of first appeal.

6 The learned Counsel for the applicant submits that he received instructions from the insurance company that they are ready and willing to deposit the entire awarded amount with interest in the Tribunal within four weeks from today. The statement is accepted.

7 Considering the submissions made by the learned Counsel for the applicant, averments made in civil application and as the applicant is ready and willing to deposit the entire awarded amount with interest and cost in the Tribunal within four weeks from today, I am satisfied that applicant has made out case for allowing this civil application.

8 In the present proceeding, the accident occurred on 24.12.2007, in which the respondent claimant sustained grievous injuries. Because of accident, he was indoor patient in City Hospital, Kolhapur from 24.12.2007 to 13.01.2008, 02.04.2008 to 04.04.2008 and from 09.05.2008 to 11.05.2008. He was operated thrice, because of injuries sustained by him in the said accident. Considering the evidence on record the Tribunal held that the respondent claimant is entitled sum of Rs. 4,66,708/- with 7% interest per annum by way of compensation.

9 Considering the submissions made by the learned Counsel for the Insurance Company and the reasons given by the Tribunal, I am of the opinion that respondent claimant is entitled to withdraw 50% compensation amount without furnishing any security but subject to the outcome of the First Appeal.

10 Hence, the following order.

a) The operation and implementation of Award dated 07.01.2015 passed by M.A.C.T. Kolhapur in M.A.C.P. No. 14 of 2009 is stayed, till the hearing and final disposal of First Appeal on condition that applicant insurance company to deposit the entire awarded amount with interest 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 herein above, the respondent claimant is entitled to proceed with execution application no. 111 of 2015 for recovery of entire awarded amount.

c) If amount is deposited within stipulated time as stated herein above, the respondent claimant Amol Jaykumar Patil is entitled to withdraw 50% amount without furnishing any security, but subject to the outcome of the First Appeal.

d) Tribunal is directed to invest the remaining amount in fixed deposit of any nationalized bank initially for the period of one year and same to be continued till the hearing and final disposal of the first appeal.

e) Liberty is granted to the respondent claimant to prefer an appropriate application, if he so desire, for withdrawal of remaining amount and that application will be decided on its own merits.

f) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)