

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

**CIVIL APPLICATION NO.307 OF 2013
IN
FIRST APPEAL NO.97 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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Ms.Varsha Chavan for the applicant

Mr.V.M.Parkar for the respondent

**CORAM : K.K.TATED, J.
DATED : 01/07/2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by Insurance Company for stay of the operation and implementation of the award dated 7.4.2012 passed by MACT, Mumbai in Application No.1282 of 2005.
- 3 The learned counsel for the applicant submits that as per the order dated 5.8.2013 passed by this court, they deposited entire awarded amount in the Tribunal. Statement is accepted.
- 4 The learned counsel for the applicant submits that in the present proceeding, the Tribunal erred in coming to the conclusion that the insured Vehicle Motor Car No.MMB-8423 which was

involved in the accident. She submits that the Trial Court has not considered the judgment passed by Criminal Court in the matter arising from the same accident where the Trial Court acquitted the driver of the vehicle. She submits that in view of these facts, Insurance Company is not liable to pay any compensation. Hence, during the pendency of the present First Appeal this Hon'ble Court be pleased to stay the operation and implementation of the impugned award dated 7.4.2012 passed by MACT, Mumbai.

5 On the other hand, the learned counsel for the respondents claimants submits that they preferred Civil Application No.3291 of 2014 for withdrawal of the amount. He submits that in the present proceeding the owner of the offending vehicle though duly served before the Trial Court, they failed and neglected to remain present. Hence, the Trial Court passed judgment and award on its own merits and held that the claimants are entitled compensation from Insurance Company as well as owner as jointly and severally. Hence, there is no question of granting any stay in the present proceeding.

6 I have heard both the sides at length. In the present proceeding, Insurance Company has already deposited entire amount.

7 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.

8 Civil Application No.3291 of 2014 preferred by respondent claimant be decided on its own merits.

9 Hence, following order:

a) Civil Application is allowed in terms of prayer clause (a) which read thus:

“(a) That pending the hearing and final disposal of this appeal, the implementation and/or the execution of the Award dated 7.4.2012 passed by Member, MACT, Mumbai be kindly stayed.”

b) Tribunal is directed to invest 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.

c) Civil Application No.3291 of 2014 filed by the defendant be decided on its own merits.

d) Civil application stands disposed off accordingly.

(K.K.TATED, J.)