

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

**CIVIL APPLICATION NO. 3521 OF 2015
IN
FIRST APPEAL (ST). NO. 27565 OF 2015**

Reliance General Insurance Co. Ltd.	... Applicant.
V/s.	
Mr. Amar Bahadur Sumiram Yadav & Anr.	... Respondent

Ms. Deepika Motagi i/b Res Juris 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 This application is preferred by insurance company for stay of operation and implementation of impugned Award dated 14.05.2015 passed by the Commissioner for Employees Compensation and Judge, 9th Labour Court, Mumbai in Application (WCA) No. 576/C-138 of 2013 holding that the respondent claimant is entitled to receive compensation of Rs. 3,48,546.24 with 12% interest per annum.

3 The learned Counsel for the applicant submits that respondent claimant filed Execution Application no. 370/G-41 of 2015 for recovery of entire awarded amount. She submits that if entire amount is recovered by the claimant, nothing will survive in the present proceeding.

4 The learned Counsel for the applicant makes a statement that they already deposited entire awarded amount in the Tribunal along with interest. Statement is accepted.

5 The learned Counsel for the applicant submits that in the present proceeding in accident which occurred on 21.04.2013, respondent claimant sustained injuries. Hence, he filed application for compensation under the Workmen Compensation Act. She submits that the Commissioner for Compensation erred in coming to the conclusion that the respondent claimant is entitled to compensation of Rs. 3,48,546.24 with 12% interest per annum.

6 The learned Counsel for the applicant submits that on the date of accident, the respondent claimant was not holding a valid licence. Hence, insurance company is not liable to pay any compensation.

7 The learned Counsel for the insurance company further submits that the Tribunal has awarded compensation on higher side. She submits that the Tribunal failed to appreciate the fact that the respondent claimant failed to produce the relevant documents to show his income on the date of accident. She submits that they have good chance of success in the present matter. She submits that in the interest of justice, this Hon'ble Court be pleased to stay operation and implementation of impugned award dated 14.05.2015 passed by the Commissioner for Workmen's Compensation till the hearing and final disposal of first appeal. She submits that if stay is not granted, irreparable loss and injury will be caused to them.

8 I heard learned Counsel for the applicant at length. In the present proceeding there is delay of 78 days in filing first appeal. On this count, the respondent claimant is entitled to withdraw some amount without furnishing any security.

9 In the present proceeding, in a accident which occurred on 21.04.2013, the respondent claimant sustained 34% disability. That disability was certified by the independent witness Dr. Naresh Khanna who has been examined at Exh.U22 who issued certificate Exh. U15.

10 Considering the fact that there is delay on the part of the applicant to file first appeal and the respondent claimant sustained disability to the extent of 34%, I am of the opinion that the respondent claimant is entitled to withdraw some amount without furnishing any security.

11 Hence, following order:

a) The operation and implementation of impugned Award dated 14.05.2015 passed by the Commissioner for Employees Compensation and Judge, 9th Labour Court, Mumbai in Application No. (WCA) No. 576/C-138 of 2013 is stayed on condition that if amount is not deposited by the applicant, the same to be deposited within two weeks from today in the Tribunal failing which civil application shall stands 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 the execution application no. 370/G-41/2015 for recovery of entire awarded amount.

c) If amount is deposited within stipulated time as stated hereinabove, the respondent claimant Mr. Amar Bahadur Sumiram Yadav 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 the 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 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.)