

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

CIVIL APPLICATION NO.1466 OF 2015

IN

FIRST APPEAL (ST) NO.28814 OF 2014

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.Devendranath S. Joshi for the applicant

CORAM : K.K.TATED, J.

DATED : 16/04/2015

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 impugned judgment and award dated 17.8.2013 passed by MACT, Mumbai in Claim Application No.6 of 2010 by which the Tribunal held that the respondents claimants are entitled sum of Rs.5,48,000/- with 7.5% interest by way of compensation.
- 3 The learned counsel for the applicant submits that the respondent claimant filed Execution Notice No.15 of 2015 for recovery of the awarded amount. He submits that if entire amount is recovered by the respondents claimants in

Execution Notice, nothing will survive in the present proceeding.

4 The learned counsel for the applicant submits that in the present proceeding, respondent no.1 claimant no.1 lost her son Noor Mohd.Akil Ahmed Qureshi, age 28 years. The deceased was engaged in fruit business and earning about Rs.9,900/- p.m.

5 The learned counsel for the applicant submits that the Tribunal in paragraph 10 of the impugned judgment held that the deceased along with his two brothers was doing the business of selling fruits. Hence, there cannot be 100% loss to the respondents claimants. He submits that inspite of that the Tribunal has held 100% loss and awarded sum of Rs.5,48,000/- by way of compensation. He submits that the compensation awarded by the Tribunal is on the higher side.

6 The learned counsel for the applicant submits that in the interest of Justice this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award dated 17.8.2013 passed by MACT, Mumbai in Claim Application No.6 of 2010. He submits that if stay is not granted, applicant will suffer irreparable financial loss. He further submits that he received instructions from the Insurance Company that they are ready and willing to deposit entire awarded

amount in the Tribunal within four weeks from today.

6 Statement is accepted.

7 As this order is passed without issuing notice to the claimant, liberty granted to them to prefer appropriate application for withdrawal of the amount and that application be decided on its own merits.

8 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and the finding given by the Tribunal in paragraph 10 of the impugned judgment, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. Hence, following order:

(a) Operation and implementation of the impugned judgment and award 17.8.2013 passed by MACT, Mumbai in Claim Application No.6 of 2010 is stayed on the condition that applicant to deposit entire awarded amount with interest and cost 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 hereinabove, respondents claimants are entitled to execute the award according to law.

(c) If amount is deposited within stipulated time as stated hereinabove, respondent claimants are entitled to withdraw following amount:

(i) Claimant No.1, Akhtari Begum Akil Ahmed Qureshi, mother of deceased Rs.1,00,000/-.

(ii) Claimant No.2, Amil Mohd.Akil Ahmed Qureshi, brother of deceased Rs.20,000/-.

(iii) Claimant no.3, Imran Mohd.Akil Ahmed Qureshi, brother of deceased Rs.20,000/-

(d) The Registry of this Court is directed to transfer the sum of Rs.25000/- if any deposited by the Insurance Company at the time of filing of First Appeal along with accrued interest to the Motor Accident Claims Tribunal, Mumbai in the account of Claim Application No.6 of 2010.

(e) 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.

(f) Rest of the amount be invested by the Tribunal 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.

(g) Civil Application is disposed of accordingly.

(K.K.TATED, J.)