

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

**CIVIL APPLICATION NO.2461 OF 2015
IN
FIRST APPEAL NO.812 OF 2015**

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.Sandeep S. Jinsivale for the applicant

CORAM : K.K.TATED, J.
DATED : 27/07/2015

PC:

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

2 This application is preferred by Insurance Company for stay of the operation and implementation of the impugned judgment and award dated 30.7.2014 passed by MACT, Nasik in MACP No.357 of 2012 holding that the respondents claimants are entitled Rs.19,54,429/- with 7.5% interest p.a. by way of compensation.

3 The learned counsel for the applicant submits that in the present proceeding, the claimant no.1 lost her husband Pradip Vaishnav in an accident which occurred on 28.12.2011. He submits that on the date of accident, the deceased was working in Police Department and was earning Rs.18,000/-

per month.

4 The learned counsel for the applicant submits that at the time of awarding compensation, the Tribunal has failed to consider the law declared by the Apex Court in the matter of *Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation reported in (2009) 6 SCC 121*. He submits that as per the law declared by the Apex Court in the matter of *Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation (Supra)*, the claimants are not entitled future prospects, if deceased was more than 50 years old. He submits that in the present proceeding, admittedly, the deceased was more than 50 years on the date of accident and inspite of that the Tribunal has awarded 30% towards future prospects. He further submits that the Tribunal has considered the multiplier of 13 which was on higher side. He further submits that the Tribunal had not considered contributory negligence at the time of awarding compensation in favour of the claimants. He submits that they have good chance of success in the present proceeding. He submits that if entire awarded amount is recovered by the respondents in Execution Application No.120 of 2014, nothing will survive in the present proceeding.

5 The learned counsel for the applicant submits that he received instruction from the Insurance

Company that they are ready and willing to deposit entire awarded amount with interest in the Tribunal within four weeks from today. Statement is accepted.

6 Considering the submissions made by the learned counsel for the applicant and as as applicant is ready and willing to deposit entire awarded amount in the Tribunal, I am satisfied that the applicant has made out a case for allowing Civil Application.

7 In the present proceeding, in an accident which occurred on 28/12/2011, claimant no.1 lost her husband Pradip Vaishnav who was working in Police Department and was earning Rs.18,000/- per month. Considering these facts, I am of the opinion that Claimant No.1, Smt.Ashwini Pradip Vaishnav is entitled to withdraw Rs.5,00,000/- with accrued interest without furnishing any security. Hence, following order:

a) Operation and implementation of the impugned award dated 30.7.2014 passed by MACT, Nasik in MACP No.357 of 2012 is stayed in favour of Insurance Company on the condition that applicant to deposit entire decretal 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 proceed with Execution Application No.120 of 2014 for recovery of awarded amount according to law.
- c) If amount is deposited within stipulated time as stated hereinabove, claimant no.1, Smt.Ashwini Pradip Vaishnav is entitled to withdraw sum of Rs.5,00,000/- with accrued interest without furnishing any security but subject to outcome of the First Appeal.
- d) In the meanwhile, Tribunal 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) 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) 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, Nashik in the account of MACP No.357 of 2012.
- g) Civil Application is disposed of accordingly.

(K.K.TATED, J.)