

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

**CIVIL APPLICATION NO.1840 OF 2014
IN
FIRST APPEAL NO.564 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.H.G.Misar for the applicant

CORAM : K.K.TATED, J.
DATED : 11/03/2015

PC:

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

2 This application is preferred by Insurance Company for stay of the operation and implementation of the impugned judgment and award dated 4.7.2013 passed by MACT, Mumbai in Application No.2279 of 2006 holding that the respondents claimants are entitled compensation of Rs.10 lacs with 7.5% interest.

3 The learned counsel for the applicant submits that the respondents claimants filed Execution Application No.287 of 2014 in which the court issue attachment order. Hence, there is urgency.

4 The learned counsel for the applicant submits that the Tribunal erred in coming to the conclusion that the respondents claimants are entitled compensation of Rs.10.0 lacs. He further submits that the Trial Court has not considered contributory negligence on the part of the deceased at the time of awarding compensation. He submits that at the time of accident, the driver of the offending vehicle was not holding driving license. He submits that the applicant has good chance of success in the present matter. He submits that if entire amount is recovered by the respondents claimants in Execution Application, nothing will survive in the present proceeding. He further submits that he received instruction from the Insurance Company that they are ready and willing to deposit entire decretal amount in the Tribunal within four weeks from today.

5 Statement is accepted.

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 judgment and award dated 04.07.2013 passed by MACT, Mumbai. He submits that if stay is not granted, irreparable loss and injury will be caused to the applicant.

7 It is to be noted that in the present proceeding,

respondent claimant lost their son, Yogesh Uttam Rahane, who was about 27 years old on the date of accident which occurred on 05.04.2006. On the date of accident the deceased was working with Godrej and Boyce Mfg. Co. Ltd., Ferozshah Nagar, Vikhroli and was drawing gross salary of Rs.9,033/- per month. On the basis of these facts, respondents claimants filed application for compensation under section 166 of the Motor Vehicles Act, 1988 for Rs.10.0 lacs. The Tribunal considering the evidence on record allowed the application filed by the respondent.

8 Considering the age of the respondents claimants, I am of the opinion that they are entitled to withdraw some amount at present without furnishing any security. Hence, following order:

(a) Operation and implementation of the judgment and award dated 4.7.2013 passed by MACT, Mumbai in Application No.2279 of 2006 is stayed 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 execute the award according to law.

(c) If amount is deposited within stipulated time as stated hereinabove, claimant no.1, Uttam Baban Rahane and claimant no.2, Chhaya Uttam Rahane, both of them are entitled to withdraw sum of Rs.3,00,000/- each without furnishing any security.

(d) 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 further orders.

(e) Liberty granted to the respondent claimant to prefer appropriate application if they so desire for withdrawal of additional amount and that application be decided on its own merits.

(f) Civil Application is disposed of accordingly.

(K.K.TATED, J.)