

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

CIVIL APPLICATION NO.119 OF 2016

IN

FIRST APPEAL (ST). NO.1024 OF 2016

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.Rahul Mehta i/b M/s.KMC Legal Venture
for the applicant

Mr.Shahaji Shinde i/b Mr.S.L.Babar for the
respondent no.1

CORAM : K.K.TATED, J.

DATED : 14/01/2016

PC:

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

2 Heard the learned counsel for the parties.

3 This application is preferred by Insurance Company for stay of the operation and implementation of the judgment and award dated 15.7.2015 passed by MACT, Satara in MACP No.99 of 2011 by which the tribunal awarded a sum of Rs.61,15,509/- with interest @ 6% p.a. by way of compensation

4 The learned counsel for the applicant submits

that in an accident which occurred on 16.10.2008 claimant Sachin Gaikwad sustained injury. Hence, he filed the petition under section 166 of the Motor Vehicles Act claiming compensation of Rs.33,50,000/-. He submits that the Tribunal erred in coming to the conclusion that the respondent claimant is entitled compensation of Rs.61,15,509/-. He further submits that the Tribunal failed to consider the fact that the respondent failed to produce cogent evidence to show his income as Rs.2 lacs per year. He submits that in the interest of Justice, this Hon'ble Court be pleased to stay the operation and implementation of the judgment and award passed by the Tribunal till the hearing and final disposal of the First Appeal. He submits that if stay is not granted, irreparable loss will be caused to them.

5 The learned counsel for the applicant Insurance Company submits that he received instruction from the Insurance Company that they are ready and willing to deposit entire awarded amount in the Tribunal within four weeks from today. Statement is accepted.

6 On the other hand, the learned counsel for the respondent no.1 original claimant vehemently opposed the present Civil Application. He submits that because of accident which occurred on 16.10.2008, claimant sustained 100% disability.

He submits that it is not possible for the respondent claimant to do any business and or agricultural activities. Hence, there is 100% loss of earning capacity. Hence, this Hon'ble Court be pleased to dismiss the present Civil Application.

7 Heard both the sides at length. It is to be noted that in the present proceeding, whether respondent claimant proved 100% earning disability or not, that is required to be considered at the time of hearing and final disposal of the First Appeal.

8 Considering the submissions made by the learned counsel for the applicant, the averments made in Civil Application and as applicants are ready and willing to deposit entire amount in the Tribunal, I am satisfied that the applicant has made out a case for allowing Civil Application. At the same time, liberty is granted to the respondent claimant to prefer appropriate application for withdrawal of the amount. That application be decided on its own merits. Hence, following order is passed:

a. The operation and implementation of the impugned judgment and award dated 15.7.2015 passed by MACT, Satara in MACP No.99 of 2011 is stayed, till hearing and final disposal of the appeal on condition that the Applicant Insurance

Company to deposit the entire awarded amount with interest, cost, if any, in the Tribunal within four weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

b. If the entire awarded amount is not deposited within stipulated time as stated hereinabove, the Respondent-claimants are entitled to execute the award as per law.

c. If the entire awarded amount is deposited within stipulated time as stated hereinabove, the Respondent-claimant Sachin Uttam Gaikwad at present is entitled to withdraw 20% amount, without furnishing any security subject to outcome of the appeal.

d. The Tribunal is directed to invest the remaining award amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

e. Liberty granted to the respondent claimant Sachin Uttam Gaikwad to prefer an appropriate Application for withdrawal of further amount, if he so desire, which will be decided on its own merits

f. The statutory deposit made by the Applicant at the time of filing the First Appeal be transferred to the Tribunal.

g. Civil application stands disposed off accordingly.

(K.K.TATED, J.)