

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

**CIVIL APPLICATION NO. 771 OF 2016
IN
FIRST APPEAL (ST.) NO. 5926 OF 2016**

The New India Assurance Co. Ltd. ... Applicant.
V/s.
Smt. Varsha Sandeep Sabale & Ors. ... Respondents

Mr. Ketan Joshi for the applicant.

**CORAM : K. K. TATED, J.
DATED : 26/02/2016**

P.C.:

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

2 Heard learned Counsel for the applicant.

3 The learned Counsel for the applicant submits that respondent-claimant filed execution application No. 170 of 2015 for recovery of awarded amount. He submits that if the entire amount is recovered by the respondents-claimants in execution application then nothing will survives in the present proceeding. Hence, there is an urgency.

4 This civil application is preferred by Insurance Company for stay of operation and implementation of the Judgment and Award dated 04.09.2015 passed by the Motor Accident Claims Tribunal, Kolhapur in Motor Accident Claim No. 644 of 2013 holding that respondents-

claimants are entitled to sum of Rs. 59,69,913/- with 9% interest per annum by way of compensation.

5 The learned Counsel for the applicant submits that Tribunal erred in coming to the conclusion that Tavera vehicle was involved in the present accident, which was insured with the applicant. He submits that the claimant failed to produce any documentary evidence or witness to show that the said vehicle i.e. Tavera vehicle was involved in the accident. Hence, Insurance Company is not liable to pay compensation. He further submits that on the date of accident, the deceased was 33 years old. In spite of that the Tribunal has considered multiplier of 17, which is on higher side. He submits that they have good chance of success in the present matter. He submits that if the entire amount is recovered by the respondents-claimants in execution application then nothing will survive in the present proceeding.

6 The learned Counsel for the insurance company submits that he received instructions from the insurance company that they are ready and willing to deposit entire awarded amount in Tribunal within four weeks from today. The statement is accepted.

7 In the present proceeding, the accident which occurred on 26.07.2013, the claimant no.1 lost her husband Sandeep who was 33 years old. That time he was serving as sub-inspector in State Excise Department of Maharashtra State. He was drawing monthly salary of Rs.25,000/-. On the basis of these facts, the respondents-claimants filed application under Section 166 of MV. Act claiming compensation of

Rs.76,72,500/-.

8 Considering the fact that claimant no.1 widow is household wife and claimant nos. 2 and 3 are minors, whereas, parents of the deceased are Senior Citizens, I am of the opinion that claimant can withdraw some amount without furnishing any security, as there is delay on the part of the applicant Insurance Company to file the present First Appeal.

9 Hence, following order is passed:

- a) Operation and implementation of the impugned Judgment and Award dated 04.09.2014 passed by the Motor Accident Claims Tribunal, Kolhapur in Motor Accident Claim No. 644 of 2013 is stayed till the hearing and final disposal of the First Appeal on condition that Applicant to deposit the entire awarded amount including 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 herein above, the respondents-claimants are free to execute the Award according to law.
- c) If amount is deposited within stipulated time as stated herein above, claimants can withdraw the amount without furnishing any security, but subject to the outcome of the First Appeal as follows:

- 1) *Smt. Varsha Sandeep Sabale - Rs.5 lacs with accrued interest.*
- 2) *Maruti Bhimaji Sabale – Rs. 1 lac with accrued interest.*
- 3) *Anjana Maruti Sabale - Rs. 1 lac with accrued interest.*
- 4) *Sunanda Maruti Sabale – Rs.2 lacs with accrued interest.*

- d) The Tribunal is directed to invest the remaining amount in Fixed deposits of any Nationalised Bank, initially for the period of one year and same to be continued till hearing and final disposal of the First Appeal.
- e) Liberty granted to the respondents claimants to take out appropriate application, if they so desire, for withdrawal of the remaining amount and that application shall be decided on its own merits.
- f) The Registry of this Court is directed to transfer the amount of Rs.25,000/- with interest if any, which was deposited by the applicant at the time of filing of First Appeal, to the Tribunal in the account of Motor Accident Claim No.644 of 2013.
- g) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)