

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

**CIVIL APPLICATION NO.705 OF 2015
IN
FIRST APPEAL (ST) NO.6488 OF 2014**

The New India Ass. Co. Ltd	.. Applicant
V e r s u s	
Prashant Vishu Shirke and Others	.. Respondents

Mr. Ramesh Cheulkar for the Applicant.
Mr. Hemant P. Ghadigaonkar for Respondent Nos. 1 to 3.

CORAM : K.K. TATED, J.

DATE : 18 FEBRUARY 2016.

P.C. :

1 Not on board. At the request of learned Counsel for the Applicant, the matter is taken on the board for urgent orders.

2 Heard the learned Counsel for the parties.

3 The learned Counsel for the Applicant submits that they preferred the present Civil Application for stay of the operation and implementation of the impugned judgment and award dated 3 June 2013 passed by MACT, at Oras, Dist Sindhudurg in MACP No.07 of 2012.

4 The learned Counsel appearing for the Applicant submits that the

Respondents/claimants have filed the execution application before the Trial Court. The next date in that application is 20 February 2016. He submits that if entire amount is recovered by the Claimants in execution application, then it will be very difficult for them to recover the entire amount if they succeed in appeal. Hence, there is urgency in the matter.

5 The learned Counsel for the Applicant submits that in the present proceedings the Tribunal erred in coming to the conclusion that the Respondents/claimant are entitled for the compensation of Rs.7,03,136/-. He submits that on the date of accident, in all four persons were riding on a bike. He further submits that the Tribunal has considered the monthly income of the deceased to the tune of Rs.5,000/-, whereas the deceased was household wife, therefore, she should not have earning more than Rs.3,000/- per month. Hence, the Applicant has a good chance of success in the present matter.

6 The learned Counsel appearing for the Applicant submits that he received instructions from the Insurance Company that they are ready and willing to deposit the entire awarded amount including the interest in the Tribunal within four weeks from today. Statement is accepted.

5 The learned Counsel appearing for the Respondents/claimants

vehemently opposed the present application. He submits that there is delay of more than 168 days in preferring the application on the part of the Insurance Company. He submits that when the Respondents/claimants filed execution application, the Insurance Company could have moved this Court for stay. He submits that the Tribunal after considering the evidence on record, awarded a reasonable compensation. He submitted that the claimant no.1 is working as labourer and claimant Nos.2 and 3 are minors. It is difficult for the claimant no.1 to maintain himself as well as both the minor children. He submitted that in the interest of justice, this Hon'ble be pleased to allow the claimants to withdraw the said amount during pendency of the present proceedings.

6 In the present proceedings, the accident occurred on 22 May 2011. The claimant no.1 lost his wife, whereas claimant nos. 2 and 3 lost their mother. On the date of accident, the deceased was 26 years old, she was educated upto SSC Standard. Considering the fact that the claimant's occupation is labour/worker and he has to maintain two minor children, I am of the opinion that the claimant no.1 should be permitted to withdraw the same amount, during pendency of the present proceedings. Hence, the following order.

: O R D E R :

{A} The operation and implementation of the impugned judgment and award dated 3 June 2013 passed by MACT, at Oras, Dist Sindhudurg in MACP No.07 of 2012, is stayed till hearing and final disposal of the First Appeal, on the condition that the Applicant to deposit the entire awarded amount alongwith interest within four weeks from today in the Tribunal, failing which the Civil Application shall stand dismissed without referring back to this Court.

{B} If the amount is not deposited within the stipulated time as stated hereinabove, the Respondents/claimants are entitled to proceed with the execution proceedings for recovery of the awarded amount in accordance with law.

{C} If the amount is deposited within the stipulated period as stated above, the claimant No.1 Prashant Vishnu Shirke is entitled to withdraw a sum of Rs.2,00,000/- with accrued interest without furnishing any security.

{D} Tribunal is directed to invest the remaining amount in the fixed deposit of any Nationalised Bank initially for the period of one year and same to be continued till further order.

{E} Liberty granted to the Respondents/claimants to take out

appropriate application, if they so desire, for withdrawal of remaining amount and that application shall be decided on its own merits.

{F} The Registry of this out 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 MACT, at Oras, Dist Sindhudurg in the account of MACP No.07 of 2012.

{G} Civil Application is disposed of accordingly.

(K.K. TATED, J.)