

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

**CIVIL APPLICATION NO. 636 OF 2016
IN
FIRST APPEAL NO. 294 OF 2016**

National Insurance Co. Ltd. ... Applicant.
V/s.
Mrs. Seema Altaf Naik & Ors. ... Respondents

Mr. Amol Gatane for the Applicant.
Mrs. S. V. Sonawane for the respondent no.1

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

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by Insurance Company for stay of operation and implementation of the Judgment and Award dated 24.07.2015 passed by the Motor Accident Claims Tribunal, Pune in M.A.C.P. No. 149 of 2012 holding that respondents-claimants are entitled to compensation of Rs.30,78,000/- with 8% interest per annum.

3 The learned Counsel for the applicant submits that in accident which occurred on 15.03.2011 Altaf Naik, who was doing business expired. He submits that claimants placed on record income tax return of the deceased Altaf for the years 2001-2002, 2003-2004, 2004-2005, 2006-2007 and 2010-2011 for proving the income of the deceased per annum.

4 The learned Counsel for the applicant submits that Respondents-claimants have not placed on record the relevant assessment years income tax return on record. He further submits that the Tribunal erred in coming to the conclusion that the respondents-claimants are entitled to compensation on the basis of income of the deceased Rs.3,67,541/- per annum. He submits that at the time of calculating per year income of the deceased, the Tribunal has considered 15% future prospects. He submits that the issue about future prospects is already referred to the larger Bench of the Apex Court in the matter of ***Shashikala & Ors.v/s. Gangalakshamma & Anr. reported in (2015) 9 Supreme Court Cases 150***. Hence, compensation awarded by the Tribunal is contrary to the well settled law. He further submits that the Tribunal at the time of deciding the yearly income of the deceased relied on income tax return of the year 2010-11 which is contrary to the law declared by the Apex Court in the matter of ***V.Subbulakshmi & Ors. V/s. S. Lakshmi & Anr. reported in (2008) 4 Supreme Court Cases 224***. In support of this contention, he relied on paragraphs 20 to 24 of said authority.

5 The learned Counsel for the applicant submits that at the time of filing of claim petition under Section 166 of M.V. Act, the respondents-claimants have not joined the driver of the offending vehicle as a party which is necessary as per the Rule 260(1) of Motor Vehicle Rules of 1989. He submits that our High Court in the matter of ***New India Assurance Company Ltd. V/s. Suman Bhaskar Pawar & Ors. reported in 2010(1) Bom.C.R. 319*** held that if the driver of the offending vehicle is not joined as a party, the claim petition itself is not

maintainable. He further submits that in the present proceeding the Tribunal specifically recorded in paragraph 8 that the accident occurred because of sole negligence on the part of the driver of the tanker bearing registration No. MH-12-R-9036.

6 On the basis of these submissions and law declared by the Apex Court as well as our High Court, the learned Counsel for the applicant submits that they have good chance of success in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of impugned Judgment and Award passed by the Tribunal till the hearing and final disposal of the First Appeal.

7 The learned Counsel for the applicant Insurance Company submits that if this court come to the conclusion that they have to deposit the entire awarded amount, then four weeks time may be granted to do so.

8 On the other hand, the learned Counsel for the Respondents-claimants vehemently opposed the present Civil Application. She submits that Tribunal after considering the evidence on record and particularly income tax returns filed by the claimants held that claimants are entitled to compensation to the tune of 30,78,000/-. She submits that claimants proved the income tax returns by examining witnesses from the Income Tax Department. She submits that considering the income of the deceased for more than 10 years, the Tribunal rightly held that it is necessary to grant future prospect of 15% at the time of calculating compensation.

9 The learned Counsel for the respondents-claimants submits that in any case, there is money decree in favour of the claimants. Hence, there is no question of granting any blanket stay in favour of applicant Insurance Company. She submits that if this Hon'ble Court grant stay then applicant may be directed to deposit the entire awarded amount with interest in the Tribunal within stipulated time with permission to the claimants to prefer appropriate application to withdraw the same.

10 I heard both the sides at length. It is to be noted that objection raised by the learned Counsel for the applicant can decide only at the time of final hearing. At present, admittedly there is money decree against the applicant. Hence, same cannot be stayed without any condition. Considering this fact, applicant has to deposit the entire awarded amount with interest in the Tribunal within four weeks from today.

11 Hence, following order is passed:

- a) Operation and implementation of the impugned Judgment and Award dated 24.07.2015 passed by the Motor Accident Claims Tribunal, Pune in M.A.C.P. No. 149 of 2012 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, the Tribunal is directed to invest the entire awarded 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.
- d) Liberty granted to the respondents claimants to take out appropriate application, if they so desire, for withdrawal of the amount and that application will be decided on its own merits.
- e) Liberty granted to the respondents-claimants, if they so desire, to execute the Judgment and Award against Respondent No.5 owner of the offending vehicle according to law.
- f) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)