

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

**CIVIL APPLICATION NO. 734 OF 2016
IN
FIRST APPEAL (ST) NO. 4990 OF 2016**

National Insurance Co. Ltd. ... Applicant
V/s.
Smt. Rekha Dhiraj Pise and others ... Respondents

Mr. Sanjeev Krishnan Advocate i/b Harshada Rane Advocate for the Applicant

**CORAM : K. K. TATED, J.
DATED : 24/02/2016**

P.C.:

Not on board. At the request of learned Advocate for 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 Judgment and Award dated 30/07/2015 passed by Motor Accident Claims Tribunal, Ichalkaranji, Dist. Kolhapur in M.A.C. Petition no. 22 of 2013.

3) Learned counsel for the applicant submits that respondent claimants filed execution application. He submits that if entire amount is recovered by the respondent claimants in execution application, and if applicant succeeds before this court, then it will be very difficult for them to recover the entire amount. Hence, there is urgency.

4) Learned counsel for the Insurance Company submits that at the time of accident, 3 persons were riding on a motorbike. Hence, Insurance Company will not be liable to pay any compensation. These facts are not considered by the Tribunal. He submits that they have good chances of success in the present proceeding. He submits that if stay is not granted, irreparable loss will be caused to the applicant.

5) Learned counsel for the Insurance Company submits that he received instructions from Insurance Company that they are ready and willing to deposit the entire awarded amount with interest and cost in Tribunal, within 4 weeks from today. Statement is accepted.

6) In the present proceedings in an accident which occurred on 13/03/2013, claimant no. 1 lost her husband whereas claimant nos. 2 & 3, their son. On the date of incident, deceased was 25 years old. He was holding Diploma in Chemical Engineering. Deceased Dhiraj was working with KEN Chemicals Pvt. Ltd. at Lote Parashuram, Tal. Khed, Dist. Ratnagiri and his salary was Rs. 25,000/- per month.

7) Considering the fact that claimant no. 1 is a widow and claimant nos. 2 & 3 are parents who are senior citizens and there is a delay on the part of Insurance Company to file first appeal, I am of the opinion that claimants are entitled to withdraw some amount without furnishing any security, subject to the outcome of the first appeal.

8) Hence, following order.

(i) Civil application is allowed in terms of prayer clause (a) on a condition that applicant Insurance Company to deposit the entire awarded amount with interest and cost in Tribunal, within 4 weeks from today, failing which civil application shall stand dismissed, without referring back to the court. Prayer clause (a) reads thus:

“(a) Pending the hearing and final disposal of the Appeal this Hon'ble Court be pleased to stay the operation of the impugned Judgment and award dated 30th July 2015 passed by the Hon'ble Member, MACT, Ichalkaranji allowing the Claim Petition bearing No. 22 of 2013 and directing this Appellant to pay the total amount of Rs. 43,18,098/- (Rupees Forty Three Lakhs Eighteen Thousand and Ninety Eight Only) with interest at the rate of 7.5% from the date of application till the date of payment/deposit.”

(ii) Registry is directed to transfer sum of Rs. 25,000/- deposited by the applicant at the time of filing of first appeal with accrued interest, if any to Motor Accident Claims Tribunal at Ichalkaranji, District Kolhapur in the account of M.A.C. Petition no. 22 of 2013, immediately.

(iii) If amount is not deposited by the Insurance Company within stipulated time as stated herein above, respondent claimants are

entitled to execute the Award according to Law.

(iv) If amount is deposited within the stipulated time as stated herein above, claimants Smt. Rekha Dhiraj Pise, Shri. Vijay Baburao Pise and Sou. Lata Vijay Pise are entitled to withdraw 10% each of the compensation, without furnishing any security, subject to the outcome of the first appeal.

(v) Liberty granted to the respondent claimants to prefer appropriate application for withdrawal of the further amount, if they so desire and that application will be decided on its own merits.

(vi) In the meanwhile, Tribunal is directed to invest the remaining amount in fixed deposit in any nationalized bank, initially for a period of 1 year and same to be continue until further orders.

(vii) Civil application stands disposed of accordingly.

(K.K.TATED, J.)