

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

**CIVIL APPLICATION NO.4072 OF 2014
IN
FIRST APPEAL (ST) NO.19411 OF 2014**

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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Ms.Yogita Deshmukh i/b Mr.M.M.Sathaye for
the applicant

CORAM : K.K.TATED, J.
DATED : 06/01/2016

PC:

- 1 Heard the learned counsel for the applicant.
- 2 This application is preferred by Insurance Company for stay of operation and implementation of the impugned judgment and award dated 28.2.2014 passed by MACT, Nasik in MACP No.410 of 2007 holding that the respondent claimant is entitled to get compensation amount of Rs.3,82,875/- with 7% interest p.a. from the date of petition till the entire amount is recovered.
- 3 The learned counsel for the applicant submits that the Tribunal erred in coming to the conclusion that Insurance Company is liable to pay compensation to the respondent claimant. She

submits that Tribunal has not considered the contributory negligence at the time of deciding the quantum of compensation.

4 The learned counsel for the applicant submits that this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award passed by the Tribunal during the pendency of the present First Appeal. He submits that if stay is not granted, irreparable loss will be caused to the applicant. He submits that applicant has good chance of success in the present matter.

5 Heard the learned counsel for the applicant at length.

6 It is to be noted that in the present proceeding in an accident which occurred on 11.12.2006 respondent claimant sustained injuries. On the date of accident his age was 40. Respondent claimant was doing agricultural activities. Because of that accident, respondent claimant lost his right leg. Same was amputated by Dr.Nerikar.

7 The learned counsel for the Insurance company submits that the Insurance Company is ready and willing to deposit entire awarded amount including interest and cost in the Tribunal within six weeks from today. Statement is accepted.

8 I am of the opinion that the respondent

claimant is entitled to withdraw 30% amount without furnishing any security subject to outcome of the First Appeal. Hence, following order is passed:

- a) The operation and implementation of the impugned judgment and award dated 28.2.2014 passed by MACT, Nasik in MACP No.410 of 2007 is stayed on the condition that applicant Insurance Company to deposit entire awarded amount in the Tribunal within six weeks from today, failing which Civil Application shall stand dismissed.
- b) If amount is not deposited within stipulated time as stated hereinabove, respondent claimant is entitled to execute award if he so desires according to law.
- c) If amount is deposited within stipulated time as stated hereinabove, respondent claimant Narayan R. Niphade is entitled to withdraw 30% amount without furnishing any security but subject to outcome of the First Appeal.
- d) Tribunal is directed to invest remaining amount in fixed deposit of any nationalised bank initially for a period of one year and same be continued till further orders.
- e) Liberty granted to the respondent claimant to prefer appropriate application if he so desires for withdrawal of further amount and that application be decided on its own merits.

f) Civil application stands disposed off accordingly.

(K.K.TATED, J.)