

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

**CIVIL APPLICATION NO.2044 OF 2015
IN
FIRST APPEAL (ST) NO.28766 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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Mr.Devendranath S. Joshi 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 the operation and implementation of the judgment and award dated 13.12.2012 passed by MACT, Mumbai in Application No.1017 of 2004 by which the Tribunal held that the respondent claimant is entitled compensation of Rs.1,27,000/- with 7.5% interest p.a. from the date of application till its realisation.
- 3 In the present proceeding in an accident which occurred on 10.12.2003 respondent claimant sustained several injuries; fracture of Tibia fibula left with puncture wound and contusion lacerated wound and abrasions as per

Exhibit '14, 15 and 17' i.e. case papers of Rajawadi Hospital . He was treated as indoor patient from 10.12.2003 to 20.12.2003. Respondent was working as Motor Mechanic. On the basis of injury sustained by the respondent, respondent filed application under section 167 of the Motor Vehicles Act, 1988 claiming compensation of Rs.1,50,000/- with interest.

4 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. He submits that respondent was travelling in Tempo and therefore Insurance Company was liable to pay any compensation. He further submits that the respondent claimant has not placed on record any evidence to show his monthly income was Rs.4,500/- per month. He submits that in any case Tribunal has awarded compensation on higher side. He 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 the impugned award till the hearing and final disposal of the First Appeal. He submits that if stay is not granted, irreparable loss will be caused to the applicant.

5 The learned counsel for the applicant submits

that he received instruction from the Insurance Company that they are ready and willing to deposit entire awarded amount with interest and cost in the Tribunal within four weeks from today. Statement is accepted.

6 Considering the submissions made by the learned counsel for the applicant, the averments made in Civil Application and as the applicants are ready and willing to deposit entire awarded amount in the Tribunal within four weeks from today, I am satisfied that the applicant has made out a case for allowing Civil Application.

7 Considering the injury sustained by the respondents claimants I am of the opinion that he is entitled to withdraw 50% amount without furnishing any security.

8 Hence, following order is passed:

a) The operation and implementation of the impugned judgment and award dated 13.12.2012 passed by MACT, Mumbai in Application No.1017 of 2004 is stayed till the hearing and final disposal of the First Appeal on the condition that applicant Insurance Company to deposit entire awarded amount in the Tribunal within four 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 Dayaram Shriram Kanojia is entitled to withdraw 50% 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.)