

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

**CIVIL APPLICATION NO.2923 OF 2015
IN
FIRST APPEAL (ST) NO.29032 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.H.G.Misar for the applicant

CORAM : K.K.TATED, J.
DATED : 25/01/2016

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 18.6.2014 passed by MACT, Pune in Spl.MACP No.8 of 2007 holding that the respondents claimants are entitled to get compensation amount of Rs.3,45,500/- with 8% interest p.a.
- 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 respondents claimants. He submits that the deceased himself was driving the vehicle. Hence, there is no question of treating him

as a third party. In support of this contention, the learned counsel for the applicant relies on the judgment of this court in the matter of ***New India Assurance Company Limited vs. Baban Narayan Bansod & Ors., 2013 (5) BCR 674.***

4 On the basis of this submission, the learned counsel for the applicant submits that the Tribunal erred in coming to the conclusion that the Insurance Company is liable to pay compensation to the respondents claimants. Hence, in the interest of justice, 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 and in case, respondents claimants recover entire amount by preferring Execution Application then nothing will survive in the present proceeding.

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

6 In the present proceeding, claimant no.1 lost her husband Abasaheb Khedekar in an accident which occurred on 12.12.99. On the date of accident, the deceased was serving with Elite

Coffee House, Uralikanchan, Pune and getting salary of Rs.3300/- per month.

7 Considering the age of deceased and his income, respondent claimant filed application under section 163A of the Motor Vehicle Act claiming compensation of Rs.3,45,000/- with 8% interest p.a. It is to be noted that Tribunal in paragraph 10 and 11 on the basis of Apex Court judgment held that Insurance Company is liable to pay compensation in the present proceeding. In the present proceeding, deceased was driving a vehicle on behalf of and for the benefit of owner. The case cited by the applicant in the matter of ***New India Assurance Company Limited vs. Baban Narayan Bansod & Ors.*** (Supra) is not applicable in the facts and circumstances of the present case. In that case, offending vehicle was driven by the brother of the owner. Hence, the Insurance company was not liable to pay compensation.

8 Considering the above mentioned facts and as Insurance Company is ready and willing to deposit entire awarded amount in the Tribunal within six weeks from today, I am satisfied that applicant has made out a case for stay but at the same time, Respondents-claimants are entitled to withdraw some amount. Hence, following order is passed:

- a. The operation and implementation of the impugned judgment and award dated 18.6.2014 passed by MACT, Pune in Spl.MACP No.8 of 2007 is stayed, till hearing and final disposal of the appeal on condition that the Applicant Insurance Company to deposit the entire awarded amount with interest, cost, if any, in the Tribunal within 6weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- b. If the entire awarded amount is not deposited within stipulated time as stated hereinabove, the Respondent-claimants are entitled to execute the award as per law.
- c. If the entire awarded amount is deposited within stipulated time as stated hereinabove, the Respondents-claimants Suman Abasaheb Khedekar and Swati Abasaheb Khedekar, both of them are entitled to withdraw 15% amount each, without furnishing any security subject to out come of the appeal.
- d. The Tribunal is directed to invest the remaining award amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.
- e. Liberty granted to the claimants to make an

appropriate Application for further withdrawal of awarded amount, if they so desire, which will be decided on its own merits

f. The statutory deposit, if any, made by the Applicant at the time of filing the First Appeal be transferred to the Tribunal.

g. Civil application stands disposed off accordingly.

(K.K.TATED, J.)