

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

**CIVIL APPLICATION NO.76 OF 2016
IN
FIRST APPEAL NO.44 OF 2016**

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.Nikhil Mehta i/b M/s.KMC Legal Venture
for the applicant

CORAM : K.K.TATED, J.
DATED : 11/01/2016

PC:

1 Not on board. At the request of Advocate for the applicant, matter is taken on board for urgent orders.

2 The learned counsel for the applicant submits that respondent claimant filed Execution Application No.13 of 2015 for recovery of entire awarded amount. He submits that he received instructions from the Insurance Company that respondent claimant is trying to execute the decree. Hence, there is urgency.

3 This application is filed by Insurance Company for stay of the operation and implementation of the impugned judgment and award dated 28.08.1995 passed by the MACT, Gadhinglaj in

MACP No.11 of 2013 holding that the respondent claimants are entitled sum of Rs.21,60,000/-with interest @ 9% p.a. by way of compensation.

The learned counsel for the applicant submits that the Tribunal erred in coming to the conclusion that the respondents claimants are entitled compensation of Rs.21,60,000/- as they failed and neglected to place on record any documentary evidence to show the net income of the deceased from his transport business. He further submits that the Tribunal failed to take only sum of Rs.25,000/- towards personal expenses of deceased from the yearly income. He submits that the Tribunal ought to have deducted 1/3rd amount towards personal expenses.

4 The learned counsel for the applicant submits that they have good chance of success in the present matter. He submits that if entire amount is recovered by the respondent claimant in Execution Application, nothing will survive in the present proceeding. He further submits that Insurance Company is ready and willing to deposit entire awarded amount in the Tribunal within a period of four weeks from today. Statement is accepted.

5 Considering the submissions made by the learned counsel for the applicant and as the Insurance Company is ready and willing to deposit entire awarded amount in the Tribunal, I am

satisfied that the applicant has made out a case for allowing Civil Application.

6 It is to be noted that in the present proceeding, in an accident which occurred on 14.11.2012 applicant no.1 lost her husband and applicant nos.2 and 3 their father who was working as a transporter. On the date of accident, he was 35 years old. Hence, the claimants filed application u/s 166 of the Motor Vehicles Act claiming compensation to the tune of Rs.44,15,000/-.

7 Considering the evidence on record, the Tribunal held that the respondent claimants are entitled sum of Rs.21,60,000/-. It is to be noted that in the present proceeding, claimant nos.2 and 3 are minors. They are taking their education. Considering these facts, I am of the opinion that claimant no.1, Smt.Laxmi Tanaji Mangle is entitled to withdraw some amount without furnishing any security. Hence, following order is passed:

a. The operation and implementation of the impugned judgment and award dated 28.08.1995 passed by the MACT, Gadhinglaj in MACP No.11 of 2013 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

four weeks 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 claimant no.1, Smt.Laxmi Tanaji Mangle is entitled to withdraw Rs.5 lacs with accrued interest, without furnishing any security subject to outcome 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 prefer an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits

f. The statutory deposit 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.)