

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.1654/2017

in

First Appeal No.516/2017

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. V. V. Parshuramani for the Applicant

CORAM : K.K.TATED,J.
DATED : JUNE 18, 2019

P.C.

1 Heard. By this Civil Application, the Applicant is seeking stay to the operation and implementation of the judgment and award dated 08.08.2018 passed by the MACT Pune in MACP No.573/2013 holding that Respondent-Claimant is entitled to sum of Rs.8,98,360/- towards compensation with 9% p.a. interest.

2 The learned counsel for the Applicant submits that the Tribunal has erred in coming to the conclusion that the Insurance Co. is liable to pay compensation to the claimant. He submits that on the date of accident i.e. 27.08.2012 the claimant was not holding a valid permit. He submits that in support of this, the Insurance Co. has

examined two witnesses i.e. R.W1 and R.W.2. He submits that an officer from the RTO said that the offending vehicle bearing No.MH-02-WA-3196 was holding a valid permit for the period 09.03.2007 to 08.03.2012 and thereafter 29.06.2013 to 28.06.2018. However, there was no permit on 27.08.2012 i.e. on the date of accident. He submits that in spite of that the Tribunal has awarded compensation in favour of the claimant. He submits that they have good chance of success in the matter. He submits that if the entire amount is recovered in the Execution Application, nothing will survive in the present proceedings. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award till hearing and final disposal of the First Appeal.

3 In an accident which occurred on 27.08.2012, the Respondent-Claimant has sustained multiple injuries and because of which the claimant had filed an application u/s.166 of the Motor Vehicles Act for compensation of Rs.6 lacs. The claimant examined P.W.2 - Dr. Sandeep Deepak Marne at exh.33. The Doctor has specifically stated that the claimant was

hospitalized for more than two months. Not only that the Doctor issued disability certificate at Exhibit- 40 which shows that the Respondent-Claimant had sustained 70% permanent disability of right lower limb.

4 Considering the fact that the claimant sustained 70% disability, I am of the opinion that the claimant can be permitted to withdraw some amount without furnishing any security, subject to outcome of the First Appeal.

5 Hence, following order is passed:

a. The Civil Application is allowed in terms of prayer clause (a) subject to the Applicant depositing the entire awarded amount along with interest and costs in the Tribunal on or before 20.07.2019, failing which the Civil Application shall stand dismissed without further reference to the court. Prayer clause (a) reads thus:

“(a) During the pendency and final disposal of the accompanying First Appeal, the operation, implementation and execution of the order dated 08.08.2018 passed by the learned Judge, MACT, Pune in MACP No.573/2013 be stayed.”

b. If amount is deposited within stipulated time as stated hereinabove, the Respondent - Claimant Dnyaneshwar Balasaheb Marne is permitted to withdraw 40% of the awarded amount with interest without furnishing any security, subject to outcome of the First Appeal.

c. 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.

d. 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

e The Civil Application stands disposed of accordingly.

(K.K.TATED, J.)