

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

**CIVIL APPLICATION NO.4232 OF 2017
IN
FIRST APPEAL NO.162 of 2018**

The New India Assurance Co. Ltd. Appellant/
Applicant
versus

Manpreet Yogesh Pagar & Ors. ... Respondents
.....

- Mr.Devendranath S. Joshi, Advocate for the Appellant/
Applicant.

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATE : 02nd FEBRUARY, 2018.**

P.C. :

1. Heard learned counsel for the Appellant.
2. This Application is preferred by the Insurance Company for staying the operation and implementation of the Judgment and Award dated 30/09/2016 passed by the Motor Accident Claims Tribunal Pune in M.A.C.P. No.346/2012 awarding sum of Rs.56,25,000/- by way of compensation with 8% interest to the Respondent/Claimants.

3. The learned counsel for the Applicant submits that they have already deposited entire amount in Tribunal on 08/12/2017. He submits that if the entire amount is withdrawn by the Respondent/Claimants, then nothing will survive in the present First Appeal. He submits that by this First Appeal, they are challenging quantum of the compensation awarded by the Tribunal. He submits that admittedly on the day of accident the deceased was not working anywhere. Not only that, the legal heirs of the deceased/original claimants failed and neglected to produce any documentary evidence to show income of the deceased. Therefore the amount awarded by the Tribunal was higher. Therefore in the interest of justice this Court be pleased to stay the operation and implementation of the Judgment and Award till the final hearing and disposal of the First Appeal.

4. We heard the learned counsel for the Applicant at length. In the present proceedings in the accident which occurred on 12/06/2011 the Respondent/claimant lost Yogesh Pagar, who was working earlier as a driver. It is specifically

stated in paragraph No.6 of the impugned judgment that late Yogesh was working with Alshamel Travel and Tourism at Doha and his monthly income was 7 to 50 Qatari Riyals. As per Indian currency, his monthly income was Rs.97,875/-. It is also recorded by the trial Court that the claimants failed and neglected to place on record any documentary evidence to that effect. But in any case considering the minimum income of late Yogesh at the rate of Rs.3,000/- per month, we are of the opinion that the Respondent original claimants can withdraw some amount at present because this order is passed without issuing any notice to them. The withdrawal is subject to the final decision of the First Appeal. Hence following order:

- (a) Civil Application is allowed in terms of prayer clause (a) which reads thus;

“Pending the hearing and final disposal of the appeal, this Honourable Court, by an order of stay, may kindly stay the operation, implementation and execution of the impugned Judgment and Award dated 30/09/2016 passed

by the Motor Accident Claims Tribunal Pune in M.A.C.P. No.346 of 2012.”

- (b) The Respondent/claimant No.1 Smt.Manpreet Yogesh Pagar can withdraw the sum of Rs.7 lakhs without furnishing any security.
- (c) The Respondent Claimant No.4 Mr.Manohar Sharawan Pagar can withdraw Rs.1,50,000/- without furnishing any security.
- (d) The Respondent Claimant No.5 Mrs. Nirmala Manohar Pagar can withdraw Rs.1,50,000/- without furnishing any security.
- (e) The Tribunal is directed to invest the remaining amount in fixed deposit of in any nationalized bank initially for a period of one year and same to be continued till further orders.
- (f) Liberty granted to the Respondent/claimants, if they so desire, to prefer an application in respect of the withdrawal of the amount. The Application will be decided on its own merits.
- (g) Civil Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)