

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

**CIVIL APPLICATION NO. 1661 OF 2019
IN
FIRST APPEAL NO. 552 OF 2019**

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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Sarthak Diwan for the Applicant.

**CORAM: K.K.TATED, J.
DATED : OCTOBER 1, 2019**

PC.

1 Heard Learned Counsel for the Applicant.

2. By this Civil Application, the Applicant Insurance Company is seeking stay of the operation and implementation of the Judgment and award dated 26/09/2018 passed by the Motor Accident Claims Tribunal, Solapur in Motor Accident Claim Petition No. 205/2013 holding that the Respondent/Original Claimants are entitled compensation of Rs. 3,08,500/- with interest @ 6% p.a.

3. The Learned Counsel for the Applicant

submits that the Tribunal failed to consider the fact that the vehicle which was insured with the Applicant was not involved in the said accident which occurred on 04/06/2012. In spite of that the Tribunal held that the Applicant is liable to pay compensation. Hence, they have good chance of success in the present proceeding.

4. The Learned Counsel for the Applicant submits that pending the hearing and final disposal of the First Appeal, this Hon'ble court be pleased to stay the operation and implementation of the impugned Judgment and award passed by the Tribunal. He submits that if the entire amount is recovered by the Respondent/Original Claimant by filing execution application then nothing will survive in the present proceeding.

5. It is to be noted that, in the accident which occurred on 04/06/2012 the Respondents/Original Claimants lost their son Dhananjay Bharat Sawant who was 25 years old on that day. The deceased was doing labour work and getting Rs. 4,000 to 4,500/- per month. On the basis of these facts, the Respondent/Original Claimants

filed claim application under Section 166 of the Motor Vehicles Act, 1988 claiming the compensation of Rs. 5,00,000/- with interest.

6. Considering the fact that the Respondents/Original Claimants lost their son, I am of the opinion that they are entitled to withdraw some amount without furnishing any security but subject to outcome of the First Appeal. Hence, the following order:

a. Civil Application is allowed in terms of prayer clause (b) on a condition that the Applicant to deposit the entire awarded amount along with interest in the Tribunal on or before 08/11/2019, failing which, Civil Application shall stand dismissed without further reference to the Court. Prayer Clause (b) reads thus:

“b. That pending the hearing and final disposal of the first appeal the effect, operation, implementation and execution of the judgment and award dated 26/09/2018 passed by Motor Accident Claims Tribunal, Solapur in MACP No. 205/2013 and disbursal of amount there under, be kindly stayed.”

b. If the amount is deposited within the time, the Respondentd/Original Claimantd

namely **Chaya Bharat Sawant** and **Bharat Sukhadeo Sawant** are entitled to withdraw amount of Rs. 1,00,000/- each without furnishing any security but subject to outcome of the First Appeal.

c. The Tribunal is directed to invest the remaining amount in a fixed deposit of any Nationalized Bank, initially for a period of one year which shall be renewed from time to time till further orders.

d. The Respondents/Original Claimants are granted liberty to take out appropriate application if they so desire for withdrawal of the further awarded amount which shall be decided on its own merits.

e. Civil Application stands disposed of accordingly.

f. No order as to costs.

(K.K.TATED, J.)