

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 2006 OF 2019
IN
FIRST APPEAL No. 678 OF 2019

Bajaj Allianz General Insurance
Company Limited ..Applicant
Vs.
Smt. Tejashri Santosh Patil & Ors...Respondents
Mr. Devendranath S. Joshi for the Applicant

CORAM: K.K. TATED, J.

DATED : JUNE 26, 2019

P.C. :

1. Heard learned counsel Mr. Devendranath Joshi 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 5th December, 2018 passed by the Motor Accident Claims Tribunal, Kolhapur in MACP No. 334 of 2014 holding that the Respondents/Original Claimant are entitled sum of Rs.55,98,496/- with interest @7% p.a.

3. Learned counsel for the Applicant submits

that they are challenging the impugned judgment and award on two grounds (i) quantum; and (2) negligence. He submits that the Tribunal failed to consider the fact that the deceased was responsible for the accident which occurred on 14th May, 2014. He further submits that the Tribunal has awarded compensation at higher side. He submits that they have good chance of success in the present proceedings. He submits that in the interest of justice, this Hon'ble Court be pleased to grant stay to the operation and implementation of the impugned judgment and award dated 5th December, 2018 during pendency of the First Appeal. He submits that if the stay is not granted, irreparable loss would be caused to the Applicant.

4. It is to be noted that in the present proceeding, the accident occurred on 14th May, 2014, in which, the Original Claimant Nos.2 and 3 lost their son Santosh Shamrao Patil, who was in service with Beuro Veritas Certification (India Pvt. Ltd.), Kolhapur Region and he was getting monthly salary of Rs.72039/-. On the basis of these facts, the Original Claimants filed claim petition under Section 166 of the

Motor Vehicles Act for compensation of Rs.1,48,93,000/-. The Tribunal after considering the evidence on record, held that the Claimants are entitled to sum of Rs.55,98,496/- by way of compensation with interest @ 7% p.a. The cause title of the matter shows that during the pendency of the First Appeal, the name of Smt. Tejashri Santosh Patil was deleted.

5. Considering these facts, I am of the opinion that the Applicant has made out a case for allowing this civil application, but at the same time they have to deposit the entire awarded amount with interest in the Tribunal and the Respondents/Claimants can withdraw some amount without furnishing any surety but, subject to outcome of the First Appeal.

6. Hence, following order:

(a) Civil Application is allowed in terms of prayer clause (a), on a condition that the Applicant to deposit the entire awarded amount with interest in Tribunal on or before 31st July, 2019, failing which civil application

shall stand dismissed without referring back to the Court. Prayer clause (a) reads thus:

“(a) 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 part of the impugned Judgment and Award dated 05/12/2018 passed by the Motor Accident Claims Tribunal Kolhapur in M.A.C.P. No.334 of 2014.”

(b) If the entire amount is deposited within stipulated time as stated hereinabove, Claimant Nos.2 and 3 viz. Shri Shamrao Shripati Patil and Sou. Indubai Shamrao Patil are entitled to withdraw 15% of compensation with interest each without furnishing any security but subject to outcome of the First Appeal.

(c) The Tribunal is directed to invest the remaining balance amount in fixed deposit of any Nationalized Bank, initially, for a period of one year and same to be continued till further orders.

(d) Liberty is granted to the Respondents/Claimants, if they so desire, to prefer appropriate application for withdrawal of further awarded amount and that application be decided on its own merits.

(e) Civil Application stands disposed of accordingly.

(f) No order as to costs.

(K. K. TATED, J.)