

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3445 OF 2017
IN
FIRST APPEAL (ST) NO. 13868 OF 2017**

The New India Assurance Company Ltd. Applicant.

Vs.

Smt.Pramila Prakash Joil and Ors. Respondents.

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Mr. Sudhakar Pandaram i/by. Mr.Milind V.More for the applicant.
Ms. Varsha Chavan for respondent Nos.1 to 5.

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**CORAM : K.K.TATED, J.
DATED : AUGUST 19, 2019**

P.C.

Heard Learned Counsel for the parties.

2. By this Civil Application, applicant/Insurance Company is seeking stay of the operation and implementation of the impugned Judgment and Award dated 16/11/2016 passed by the Tribunal, holding that the respondents/claimants are entitled for compensation of Rs.8,48,000/- with interest at the rate of 9% p.a.

3. The Learned Counsel for the applicant submits that they have deposited the entire amount in Tribunal with interest. The

statement is accepted. He submits that pending the hearing and final disposal of the First Appeal, this Hon'ble Court may be pleased to stay the operation and implementation of impugned Judgment and Order. He submits that if entire amount is withdrawn by the respondents/claimants, nothing will survive in the present case. He further submits that, the Tribunal failed to consider the fact that the deceased himself was responsible for the accident. Therefore, they have good chances of success.

4. On the other hand, the Learned Counsel Ms.Varsha Chavan appearing on behalf of the claimant submits that the Tribunal after considering the evidence on record, held that the claimants are entitled for the compensation. She submits that in view of delay, there is no question of granting any stay in favour of the applicant. Hence, Civil Application is required to be dismissed with costs.

5. I have heard both the sides.

6. It is to be noted that in the present proceedings, the accident occurred on 06/02/2014, in which, the claimant No.1 lost her husband Prakash Rajaram Joil. At that time, he was working as a driver

and he was getting the salary of Rs.13,000/-. Considering this facts and as the claimant No.1 is housewife and claimant Nos.2 to 4 are her children, I am of the opinion that the claimants can be permitted to withdraw some amount till the pendency of the First Appeal. Hence, the following order:-

ORDER

(A) Civil Application No.3445 of 2017 is allowed in terms of prayer clause (a), which read thus :

“(a) To stay the execution of the Judgment and Award dated 16th November, 2016, passed by the Learned Member, Motor Accident Claim Tribunal, at Sindhudurg, in Motor Accident Claim Petition No.55 of 2014.”

(B) The respondents/original claimants are permitted to withdraw 50% amount including interest as per their share without furnishing any security, but subject to outcome of the First Appeal.

(C) The Tribunal is directed to invest the remaining award amount in a Fixed Deposit of any Nationalized Bank, initially for a period of one year and same to be continued till further order.

(D) Civil Application stands disposed of accordingly.

(E) No order as to costs.

(K.K.TATED, J.)

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