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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO. 1277 of 2019****IN****FIRST APPEAL NO. 355 OF 2019**

Future Generali India Insurance
Co. Ltd.

.....Applicant

V/s.

Mr. Parameshwar Suraj Mandal and others

.....Respondents

Mrs. Deepika P. i/b Res Juris for applicant

CORAM : K. K. TATED, J.

DATE : APRIL 2, 2019.

P.C.

At the request of the learned counsel for the applicant, matter is taken on production board.

2 By this Civil Application, Insurance Company is seeking stay of operation and implementation of Judgment and Award dated 31/10/2019 passed by Motor Accident Claims Tribunal at Mumbai

in Application No. 2194 of 2012 holding that respondent-claimants are entitled to sum of Rs. 11,01,000/- by way of compensation alongwith 7.5% interest per annum.

3 The learned counsel for the applicant submits that respondent-claimants filed Execution Application before the Trial Court. She submits that Execution Court issued notice and the next date is 10/04/2019. She submits that if entire amount is recovered by the respondent-claimants in Execution Application then nothing survives in First Appeal.

4 The learned counsel for the applicant submits that in the present case, Tribunal failed to consider the fact that driver of the offending vehicle was not holding valid licence. Therefore, there is no question holding the Insurance Company liable to pay the compensation. In support of this, she relies on para 10 of the impugned Judgment and Award passed by the Trial Court. She further submits that she received instructions from her client that they are ready and willing to deposit entire awarded amount in the

Tribunal within 4 weeks from today.

5 The learned counsel for the applicant submits that in the interest of justice prays that this Hon'ble Court be pleased to stay the operation and implementation of the impugned Judgment and Award till the decision and final disposal of the First Appeal.

6 Heard the learned counsel for the applicant.

7 It is to be noted that in the present proceedings, accident occurred on 15/08/2012 in which respondent-claimants lost their son. Therefore, respondent-claimants filed Application under Section 166 of the Motor Vehicles Act claiming compensation of Rs. 10 Lakhs with 12% interest. The Tribunal, after considering evidence on record, awarded Rs. 11,01,000/- by way of compensation. Considering the fact that respondent-claimants lost their son and they have already filed Execution Application, they are entitled to some amount without furnishing any security. Hence, following order:

(I) The operation and implementation of the impugned Judgment and Award dated 31/10/2018 passed by Motor Accident Claims Tribunal at Mumbai in Application No. 2194 of 2012 is stayed till the hearing and final disposal of the First Appeal on condition that applicant to deposit entire awarded amount including interest and cost in Tribunal on or before 30/04/2019, failing which Civil Application shall stand dismissed without referring back to the Court.

(II) After amount is deposited within stipulated time as stated herein above, both claimants i.e. Mr. Parameshwar Suraj Mandal and Mrs. Jashu Parameshwar Mandal are entitled to withdraw 15% each of the total compensation without furnishing any security.

(III) Tribunal is directed to invest the remaining amount in fixed deposit in any nationalized bank, initially for period of one year and same to be continued till further orders.

(IV) Liberty granted to respondents to prefer appropriate application, if they so desire, for withdrawal of further amount and that may be decided on its own merits.

(V) Civil Application stands disposed of.

(VI) No order as to costs.

[K. K. TATED, J.]