

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2382 OF 2019
IN
FIRST APPEAL (ST) NO. 726 OF 2019**

The New India Assurance Co.Ltd.
Through its Manager

..... Applicant.

Vs.

Shila Chandrakant Patil and Ors.

..... Respondents.

.....

Ms. Jyoti Bajpayee for the applicant.
None for the respondents.

.....

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

P.C.

Heard Learned Counsel Ms.Jyoti Bajpayee for the applicant.

2. By this Civil Application, applicant/Assurance Company is seeking stay of the operation and implementation of the impugned Judgment and Award dated 20/01/2018 passed by Motor Accident Claims Tribunal, Vasai in Motor Accident Claim Petition No. 28 of 2012, holding that the respondents/claimants are entitled of Rs.19,75,300/- by way of compensation with interest at the rate of 7% p.a.

3. The Learned Counsel for the applicant submits that at the time of awarding the compensation, the Tribunal has considered the age of deceased as 30 years only. But, as per their contention and the documents on record shows that the deceased was 35 years old on the date of accident. She further submits that even the claimants failed to place on record any documentary evidence to show the net income of deceased. Hence, they have good chances to succeed in the present matter.

4. Learned Counsel for the applicant further 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 the impugned Judgment and Award passed by the Tribunal. She submits that if entire amount is recovered by the respondents/claimants by filing execution application, then nothing will survive in the present appeal. Therefore, in the interest of justice, this Hon'ble Court may be pleased to allow the present Civil Application.

5. It is to be noted that in the present proceedings, claimant No.1 lost her husband, claimant No.2 her father and claimant No.3 her son. On the date of incident i.e. on 08/02/2012, the deceased was 30

years old as per the contention of the claimants, he was getting salary of Rs.9,000/- per month. Because of accident, Chandrakant Krushna Patil died on 25/02/2012 and hence the claimants filed application under Section 166 of the Motor Vehicle Act for compensation. In that application, the Tribunal, after considering the evidence on record, held that the claimants are entitled for sum of Rs.19,75,300/- by way of compensation.

6. It is to be noted that claimant No.1 is housewife, claimant No.2 is the minor daughter of the deceased and claimant No.3 i.e. senior citizen, mother of the deceased. Considering this fact, I am of the opinion that during the pendency of the First Appeal, the claimants can be permitted to withdraw the some amount till the pendency of the First Appeal.

7. The Learned Counsel for the applicant submits that at the time of filing the First Appeal, they deposited Rs.25,000/- in the Registry of this Court which is to be transferred to the Motor Accident Claims Tribunal alongwith accrued interest. Hence, the following order:-

ORDER

(a) The operation and implementation of Judgment and Award dated 20/01/2018 passed by the Motor Accident Claims Tribunal, Vasai in Motor Accident Claim Petition No.28 of 2012 is stayed, pending the hearing and final disposal of the First Appeal, on condition that the applicant/Insurance Company to deposit the entire awarded amount with interest, cost, if any, in the Tribunal on or before 21/09/2019, failing which, the Civil Application shall stand dismissed without further reference to the Court.

(b) If this amount is deposited within stipulated time as stated above, claimant No.1 Shila Chandrakant Patil is entitled to withdraw 20% of total compensation with accrued interest without furnishing security and claimant No.3 Smt.Chandrabhagabai Patil is entitled to withdraw 5% of total compensation with accrued interest without furnishing any security, subject to outcome of the First Appeal.

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

(d) Liberty is granted to the claimant to prefer an appropriate application, if they so desire, for withdrawal of amount, which will be decided on its own merits.

(e) Registry is directed to transfer sum of Rs.25,000/-, deposited by the Insurance Company alongwith accrued interest, if nay, to the Motor Accident Claims Tribunal, Vasai in the account of Motor Accident Claim Petition No.28 of 2012 immediately.

(f) Civil Application stands disposed of accordingly.

(g) No order as to costs.

(K.K.TATED, J.)