

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 1545 OF 2019
IN
FIRST APPEAL No. 474 OF 2019

Bajaj Allianz General Insurance
Company Ltd. through Its
Authorized Officer

...Applicant

Vs.

Mr. Hari Abalu Fasale and Ors.

...Respondents

Mr. Sarthak S. Diwan for the Applicant

CORAM: K.K. TATED, J.

DATE : MAY 2, 2019

P.C. :

1. Not on Board. At the request of learned counsel for the Applicant, matter is taken on board.
2. Heard learned counsel Mr. Sarthak Diwan for the Applicant
3. By this Civil Application, the Applicant Insurance Company is seeking stay of the operation and implementation of the Judgment and Award dated 21st September, 2018 passed by the Motor Accident Claim Tribunal, Nashik in MACP No. 54 of 2015 holding that Respondents /Claimants are entitled sum of Rs. 7,24,500/- by way of compensation along with interest at the rate of 7% p.a.
4. Learned counsel for the Applicant submits that in the present proceedings, the Tribunal failed to consider the fact that on the date of accident, the offending vehicle was not holding the valid insurance policy. Hence, appellants are not liable to pay any compensation. He

further submits that if the entire compensation is recovered by the Respondents/Claimants by filing execution application, then nothing will survive in the present proceedings. They have good chance of success in the First Appeal. He further submits that pending the hearing and final disposal of the First Appeal, the operation and implementation of the Impugned Judgment and Award may be stayed.

5. Learned counsel for the Applicant submits that he received instructions that, the Applicant is ready and willing to deposit the entire awarded amount along with interest on or before 21st June, 2019 in the Tribunal. Statement is accepted.

6. In the present proceedings, the accident occurred on 19th December, 2014. The Respondents/Claimants lost their son Vishal Hari Fasale, who was unmarried, aged about 21 years and at that time he was earning Rs.9,000/- p.m. from his work as Helper. On the basis of this fact, the Respondents/Claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming the compensation of Rs.20,000/-. The Tribunal after considering the evidence on record, held that the Respondents/Claimants are entitled to get sum of Rs.7,24,500/-

7. Considering this fact, I am of the opinion that the Respondents /Claimants can be permitted to withdraw some amount without furnishing any security during the pendency of the First Appeal, but subject to outcome of the First Appeal.

5. Considering the submissions made by the learned counsel for the Applicants and perusing the impugned judgment and award dated 21st September, 2018, I am satisfied that the Applicant has made out a case for allowing this Civil Application :

ORDER

- (A) Civil Application is allowed in terms of prayer clause (b) on condition that the Applicant to deposit entire awarded amount along with interest accrued thereon in the Tribunal at Nashik on or before 21st June, 2019, failing which the civil application shall stand dismissed without referring back to the Court.

Prayer clause (b) reads thus:

“b) That pending hearing and final disposal of the present First Appeal, the effect, operation, implementation and execution of the impugned Judgment and Award dated 21.09.2018 passed by the Motor Accidents Claim Tribunal at Nashik in M.A.C.P. No.54 of 2015 and disbursal of amount there under, be kindly stayed.”

- (B) If amount deposited within time as stated hereinabove, Hari Abalu Fasale Claimant No.1 and Mangala Hari Fasale Claimant No.2 are entitled to withdraw some of Rs.1,50,000/- each with accrued interest thereon without furnishing any security, but subject to outcome of the First Appeal.
- (C) The Tribunal is directed to invest the remaining balance amount in the fixed deposit of any nationalized bank initially, for a period of one year and same to be continued till further orders.
- (D) Liberty granted to the Claimants to make appropriate Application for withdrawal of further amount and that Application decided on its own merits.

Civil application stands disposed off accordingly.

(K. K. TATED, J.)