IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 2028 OF 2019
IN
FIRST APPEAL (ST) No. 4475 OF 2019

Reliance General Insurance Co. Ltd. ...Applicant
Vs.
Shri Vijay Daji Rawool and Another ...Respondents

Mrs. Shalini Shankar for Applicant

**CORAM: K.K. TATED, J.**

**DATED : JUNE 19, 2019**

**P.C.** :

1. Heard learned counsel Mrs. Shalini Shankar 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 11th June, 2018 passed by the Motor Accident Claim Tribunal , Mumbai in MACP No. 305 of 2012 holding that the Respondent No.1 / Original Claimant is entitled sum of Rs.3,29,375/- by way of compensation with interest @7.5% p.a.

3. Learned counsel for the Applicant submits that the Tribunal at the time of awarding compensation, failed to consider the fact that there was breach of terms and conditions of insurance policy and, therefore, Insurance Company is not liable to pay any compensation. She submits that even the claim awarded is at higher side. She submits that they have good chance of success in the present proceeding. She submits

that if the entire amount is recovered by the Respondent /Claimant by filing execution application, then nothing will survive in the present proceeding.

4. Learned counsel for the Applicant submits that she received instructions from the Appellant that they are ready and willing to deposit the entire awarded amount with interest in Tribunal within three weeks from today. She submits that pending the hearing and final disposal of the present Appeal, this Hon'ble Court be pleased to stay the operation, implementation of the impugned judgment and award dated 11th June, 2018.

5. It is to be noted that in accident, which occurred on 10th December, 2011, the Respondent No.1/Original Claimant sustained injury and he filed application under Section 166 of the Motor Vehicles Act, 1988. The Respondent No.1/Claimant examined the Dr. Satish Puranik, who certified that the Respondent No.1/Claimant sustained permanent disability to the extent of 32%. Even at the time of passing of the impugned judgment and award, the tribunal has considered the functional disability to the extent of 100%. Considering these facts, I am of the opinion that the Claimant can be permitted to withdraw some amount without furnishing any security but subject to outcome of the First Appeal.

6. Hence, following order:

(a) Civil Application is allowed in terms of prayer clause (a), on condition that the Applicant Insurance Company to deposit the entire awarded amount along with interest in tribunal on or before 19th 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 present first Appeal, this Hon'ble Court be pleased to stay the effect, implementation and or execution of the impugned Judgment and order dated 11/06/2018 passed by the Hon'ble Court of Member, in Motor Accident Claim Petition No.305 of 2012."

(b) If the amount is deposited within stipulated time as stated hereinabove , the Respondent No.1 / Claimant Vijay Daji Rawool is permitted to withdraw 30% awarded amount with interest without furnishing any security but subject to outcome of the First Appeal.

(c) The Tribunal is directed to invest the 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 granted to the Claimant to make appropriate Application for withdrawal of further awarded amount and that Application be decided on its own merits.

(e) Civil application stands disposed off accordingly.

(**K. K. TATED, J.**)