IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 2024 OF 2019
IN
FIRST APPEAL (ST) 4765 OF 2019

Reliance General Insurance Co. Ltd. ...Applicant
Vs.
Mr. Sandeep Sitaram Bhor and Anr. ...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 30th June, 2017 passed by the Motor Accident Claim Tribunal, Thane in MACP No. 792 of 2013, awarding sum of Rs.3,16,179/- by way of compensation with interest @8% p.a.

3. Learned counsel for the Applicant submits that in the trial court, they have specifically raised objection, that the Respondent/Claimant placed on record a fake insurance policy. Therefore, the Applicant Insurance Company is not liable to pay any compensation. She submits that this issue was not properly discussed and without considering the evidence on record, the tribunal held that the Insurance Company is liable to pay the compensation to the Original Claimant. She submits that they have good chance of success in the present proceedings.

4. The learned counsel for the Applicant submits that if the entire amount is recovered by the Respondent – Claimant by filing execution proceeding, then nothing will survive in the present proceedings. She submits that she received instructions from the Applicant that they are ready and willing to deposit the entire awarded amount with interest in the tribunal within three weeks.

5. The learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award passed by the tribunal till hearing and final disposal of the First Appeal.

5. It is to be noted that in the present proceeding, an accident had occurred on 5th March, 2012. The Respondent- Claimant Sandeep Sitaram Bhor sustained multiple injuries in of the said accident. He was admitted in MGM Hospital, Vashi, Navi Mumbai. He was in hospital from 5th March, 2012 till 28th April, 2012. At the time of accident, he was 30 years' old and he was doing service in Ulimate Marine Pvt. Ltd. and he was earning Rs.12,000/- per month. Considering these facts, I am of the opinion that the Respondent-Original Claimant may be permitted to withdraw some amount during the pendency of the First Appeal, without furnishing any security, but, subject to outcome of the First Appeal. In any case, there is a delay of more than one year and 128 days in filing the First Appeal.

6. Hence, following order is passed:

(a) Civil Application is allowed in terms of prayer clause (a), on a condition that the Applicant Insurance Company have to deposit entire awarded amount in Tribunal on or before 19th July, 2019, failing which, Civil Application shall stand dismissed without referring back to the Court. Prayer clause (a), which 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 30/06/2017 passed by the Hon'ble Court of Member, in Motor Accident Claim Petition No. 792 of 2013."

(b) If entire amount is deposited within stipulated time as stated hereinabove, Respondent -Claimant Sandeep Sitaram Bhor is entitled to withdraw 40% amount of compensation with interest, without furnishing any security, but, subject to outcome of the First Appeal.

(c) Tribunal is directed to invest the remaining 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 Respondent -Claimant, if he so desires, to prefer appropriate application for withdrawal of further amount and that application to be decided on its own merits.

(e) Civil Application stands disposed of accordingly.

(f) No order as to costs.

(K. K. TATED, J.)