

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2320/2019

in

First Appeal (ST) No.6442/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. D. S. Joshi for the Applicant

CORAM: K.K.TATED, J.

DATED : SEPTEMBER 19, 2019

P.C.

1 Pursuant to the praecipe filed by the learned counsel for the Applicant, the matter is taken on production board.

2 The learned counsel for the Applicant submits that the Respondent-Claimant has filed Execution Application for recovery of the amount. Hence, there is urgency.

3 By this Civil Application, the Applicant is seeking stay to the operation and implementation of the judgment and award dated 04.04.2018 passed by the MACT Raigad in MACP No.20/2010 holding that the Respondent-Claimants are entitled to

Rs.58,93,809/- by way of compensation with interest @ 7.5% p.a. from the date of petition till realisation of the entire amount.

4 The learned counsel for the Applicant submits that the by this First Appeal, they are challenging the impugned judgment and award on the basis of the contributory negligence and quantum. He submits that while deciding the compensation the tribunal has failed to consider the contributory negligence of the deceased. He submits that event the compensation awarded by the Tribunal is on higher side. He submits that they have good chance of success in the matter. He 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 till hearing and final disposal of the First Appeal.

5 The learned counsel for the Applicant submits that he received instructions from their client that they are ready and willing to deposit the entire awarded amount along with accrued interest, if any, in the Tribunal

within four weeks from today. The statement is accepted.

6 It is to be noted that in the present proceedings in an accident which occurred on 26.05.2008 Dagdu Kondiba Kokane sustained severe injuries because of which he was hospitalized. He spent more than 8-10 lacs on medical expenses. Hence, the claimants filed application u/s.166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.1,07,96,800/-. During pendency of the claim application the claimant Dagdu Kondiba Kokane succumbed to the injuries on 29.05.2010. Hence, the widow and the children of the deceased were brought on record before the Tribunal.

7 Considering the fact that the claimant No.2 lost her father and claimant No.3 is minor, I am of the opinion that claimant Nos.1 and 2 can be permitted to withdraw some amount during pendency of the First Appeal, as there is delay of more than 6 months on the part of the Applicant to file the First Appeal.

8 Hence, following order is passed:

a. The Civil Application is allowed in terms of prayer clause (b) subject to the Applicant depositing the entire awarded amount along with interest and costs in the Tribunal on or before 18.10.2019 failing which the Civil Application shall stand dismissed without further reference to the court. Prayer clause (b) reads thus:

“(b) Pending the hearing and final disposal of the appeal, this Hon'ble Court by an order of stay, may kindly stay the operation, implementation and execution of the impugned judgment and award dated 04.04.2018 passed by the MACT Mangaon in MACP No.20/2010.”

b. If amount is deposited within stipulated time as stated hereinabove, claimants are entitled to withdraw the following amount with accrued interest without furnishing any security but subject to outcome of the First Appeal.

a. Claimant No.1 Sunita Dagdu Kokane - Rs.7,00,000/-

b. Claimant No.2 Aakanksha Dagdu Kokane - Rs. 5,00,000/-

c. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

d. Liberty granted to the claimants to prefer an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits

e. The sum of Rs.25000/- deposited by the Appellant at the time of filing the First Appeal be transferred to the Tribunal in the respective MACP Account.

f. The Civil Application stands disposed of accordingly.

g. No order as to costs.

(K.K.TATED, J.)