

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1630/2019
IN
FIRST APPEAL(STAMP)NO.6544/2019

The Oriental Insurance Co. Ltd. ... Appellant/Insurer
Vs.
Mehmood Abbas Hamdule & ors.... Respondent.

Mr.D.S.Joshi, advocate for applicant.
None for respondent.

CORAM : K.K.TATED, J.
DATED : JUNE 12, 2019.

P.C.

Heard learned counsel for applicant.

2. By this civil application, applicant/Insurance Company is seeking stay of operation and implementation of impugned judgment and award dated 26.9.2018 passed by Motor Accident Claim Tribunal, Khed in Motor Accident Claim Petition no.50/2015 holding that, respondent/claimants are entitled sum of Rs.10,90,000/- towards compensation with interest @ 9% per annum.

3. Learned counsel for applicant submits that if entire amount is recovered by respondents/original claimants by filing execution application then nothing will survive in the present proceeding. He submits that the learned trial court framed issue no.2 i.e. "Whether the said accident took place due to rash

and negligent driving of the said vehicle?”. The learned trial court after considering the evidence on record held that, there was no rash and negligent driving of the said vehicle by claimants. He submits that, when there was no rash and negligent driving of the said vehicle by claimants, then there is no question of paying compensation to the respondents/claimants. Even the claim petition itself is not maintainable.

4. Learned counsel for applicant, submits that they have good chance of success. He submits that in the interest of justice, this court be pleased to stay operation and implementation of impugned judgment and award passed by the tribunal till hearing and final disposal of first appeal. He submits that he received instructions from his client that they are ready and willing to deposit entire awarded amount alongwith the interest in the Tribunal, within 4 weeks from today. Statement is accepted.

5. Considering the submission made by the learned counsel for applicant, averments made in application and whether Company is liable to pay the compensation as negligent and rash driving of said vehicle is not proved, I am of the opinion that applicant has made out a case for allowing this application but, they have to deposit the entire awarded amount with interest.

6. Hence, the following order.

A) Civil application is allowed in terms of prayer clause (a) which is reproduced below, on condition that applicant Company to deposit entire awarded amount in the Tribunal on or before 20.7.2019 failing which, the civil application shall stand dismissed without referring back to the court.

“a)Pending the hearing and final disposal fo the appeal, this Honourable Court by an order of stay, may kindly stay the operation, implementation and execution of the impugned judgment and award dated 26.9.2018 passed by the Motor Accident Claims Tribunal Khed, in M.A.C.P.No.50/2015.”

B) If, the amount is deposited within stipulated time as stated above, the Tribunal is directed to invest the entire amount in a Fixed deposit of any Nationalized bank, initially for a period of one year and thereafter same be continued till further orders.

C) Claimant no.1 Mehmood Abbas Hamdule and No.2 Smt. Banu Mehmood Hamdule are permitted to withdraw a sum of Rs.20,000/- with accrued interest and claimant no.3 Smt.Naiema Maqbool Hamdule-Rs.50,000/- with accrued interest without furnishing any security but, subject to outcome of first appeal.

D) Liberty granted to respondent/claimants if they so desire

to prefer appropriate application for withdrawal of further amount and that application will be decided on its own merits.

E) Civil application stands disposed of accordingly.

(K.K.TATED, J.)

