

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2565 OF 2019
IN
FIRST APPEAL (ST) NO.7505 OF 2019**

National Insurance Co. Ltd. ..Applicant
V/s.
Mr.Suresh Shankar Bhosale & Ors. .. Respondents

Mr.Amol Gatane for the Applicant.

CORAM : K.K. TATED, J.

DATE : 30th JULY 2019

P.C.

1. Heard learned counsel Mr.Amol Gatane for the applicant.

2. By this Civil Application, applicant-insurance company is seeking stay of the operation and implementation of judgment and award dated 31.07.2018 passed by the MACT, Satara in MACP No.402 of 2012 holding that the respondent-claimant are entitled for compensation of Rs.8,26,000/- with interest @ 7.5% per annum.

3. The learned counsel for the applicant submits that they have a good chance of success in the present proceedings. He submits that in the present proceedings insurance company are not

liable to pay compensation. The claimants placed on record the fake insurance policy. To that effect he relies on paragraph Nos.13 and 14 of the impugned judgment. He submits that the Tribunal observed that, if the policy is declared fake by the Competent Court, then the insurance-company can recover the compensation from the owner of the vehicle. He submits that *prima-facie* fake insurance policy is placed on record. Hence, the Insurance company is not liable to pay any compensation. Hence they have a good chance of success in the present proceedings.

4. The learned counsel for applicant submits that if the entire amount is recovered by the respondent-claimants, by filing execution application, nothing will survive in the present proceedings. He submits that in the interest of justice, pending the hearing and final disposal of the first appeal this Hon'ble Court be pleased to stay the operation and implementation of the judgment and award. He submits that irreparable loss will be caused to them.

5. The learned counsel for the applicant-insurance company submits that he has received instructions from his clients that they are ready and willing to deposit entire amount within four weeks from today.

6. It is to be noted that in the present proceedings the accident occurred on 06.07.2012 in which the respondent-claimants lost their son Mayur who was 22 years old at the time of the accident. The deceased was studying in B.Com Part-II and doing part time job with a Chartered Accountant. On the basis of this, the respondent-claimants filed an application under Section 166 of the Motor Vehicle Act, 1988 claiming the compensation to the tune of Rs.27,20,000/- with interest. The Tribunal after considering the evidence on record held that the respondent-claimants are entitled a sum of Rs.8,26,000/- with interest @ 7.5% per annum. It is to be noted that there is a delay on the part of the applicant to file this civil application.

7. Considering this fact I am of the opinion that the respondent-claimant can withdraw same amount during the pendency of the First Appeal, hence following order.

ORDER

(i) Civil Application is allowed in terms of prayer clause (B) which reads thus :-

“(B) Your lordship be pleased to stay the execution, operation and implementation of the impugned judgment and order/award dated 31.07.2018, passed by the Member, MACT, Satara, District-Satara in MACP No.402 of 2012, under Section 166 of the M.V. Act, 1988; till the final

hearing and disposal of the First Appeal, as against the Applicant.”

On condition that the applicant deposit the entire amount with interest in Tribunal on or before 30th August 2019 failing which the Civil Application shall stand dismissed without referring back to the Court.

(ii) If the amount is deposited within stipulated time as stated in above, both the claimants are entitled to withdraw 20% of total compensation along with interest each without furnishing any security but subject to the outcome of the First Appeal.

(iii) The remaining amount shall be invested in fixed deposit of any Nationalized Bank, initially for a period of one year till further orders.

(iv) Liberty granted to the respondent-claimant if they so desire to prefer appropriate application for withdrawal of the further amount and that to be decided on its own merits.

6. Civil Application is disposed of accordingly. No order as to costs.

(K.K. TATED, J.)