

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Civil Application No.2198/2019  
in  
First Appeal (ST) No.8607/2019

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| 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. A. P. Kulkarni for the Applicant

**CORAM : K.K.TATED, J.**  
**DATED : JULY 9, 2019**

**P.C.**

1 Heard.

2 By this Civil Application the Applicant Insurance Co. is seeking stay to the operation and implementation of the impugned judgment and award dated 29.10.2018 passed by the MACT Nasik in MACP No.20/2013 holding that the Respondent-Claimant is entitled to compensation of Rs.2,32,688/- with interest @ 9% p.a.

3 The learned counsel for the Applicant submits that the Respondent-Claimant was gratuitous passenger in the offending vehicle therefore, the Insurance Co. is not liable to pay any compensation. He submits that those

facts were not considered by the Trial Court at the time of passing the impugned order. He submits that they have good chance of success in the matter. He submits that if the entire amount is recovered in the Execution Application, nothing will survive in the present proceedings. 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.

4 It is to be noted that in the present proceedings in an accident which occurred on 19.08.2012 the Respondent-Claimant sustained injury. In support of this contention, the Respondent-Claimant examined P.W.3 Dr. Bhikan More who certified that the Respondent-Claimant sustained 20% permanent disability. Dr. Bhikan More issued certificate to that effect which is at Exhibit-52. In paragraph 16 of the impugned judgment, the Tribunal has recorded that the Respondent-Claimant has proved the medical bills in the sum of Rs.70,288/-. He was running grocery shop and was getting Rs.6000/- pm.

from the said occupation. Hence, the Respondent-Claimant had filed claim petition u/s.166 of the Motor Vehicles Act, 1988 for compensation of Rs.3 lacs.

5 Considering all these facts and as there is delay on the part of the Appellant to prefer the First Appeal, I am of the opinion that the Respondent-Claimant can be permitted to withdraw some amount during pendency of the First Appeal.

6 Hence, following order is passed:

a. The Civil Application is allowed in terms of prayer clause (a) subject to the Applicant depositing the entire awarded amount along with interest and costs in the Tribunal on or before 16.08.2019, failing which the Civil Application shall stand dismissed without further reference to the court. Prayer clause (a) reads thus

*“(a) That pending hearing and final disposal of the present First Appeal, the effect, operation, implementation and execution of the impugned judgment and award dated 29.10.2018 passed by the MACT, Nashik in MACP No.20/2013 and disbursal of amount there under, be kindly stayed.”*

b. If amount is deposited within stipulated time as stated hereinabove the Respondent-Claimant Kalidas Ramchandra Ghode is entitled to withdraw 50% of same with accrued interest without furnishing any security but subject to outcome of the First Appeal.

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 Applicant Insurance Co. to proceed against the owner of the offending vehicle for recovery of the compensation amount with interest as liberty granted by the Trial Court.

e. The Civil Application stands disposed of accordingly.

f. No order as to costs.

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