

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2397/2019
in
First Appeal (ST) No.8631/2019

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. A. P. Kulkarni for the Applicant

CORAM : K.K.TATED, J.
DATED : JULY 15, 2019

P.C.

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

2 By this Civil Application, the Applicant is seeking stay to the operation and implementation of the impugned judgment and award dated 12.11.2018 passed by the MACT Nasik in MACP No.694/2015 holding that the Respondent-Claimants are entitled to sum of Rs.9,15,000/- with interest @ 9% p.a.

3 The learned counsel for the Applicant submits that in para 17 of the impugned judgment and award the Tribunal has specifically held that the

Insurance Co. has proved that they are not liable to pay any compensation to the claimant under the Motor Vehicles Act, 1988. He submits that in spite of that the Tribunal while passing the final order held that the Insurance Co. is liable to pay jointly and severally sum of Rs.9,15,000/- to the Respondent-Claimant. He submits that they have good chance of success in the matter. He submits that if the entire amount is recovered by the claimants by filing execution application, then nothing will survive in the present proceedings. The learned counsel for the Applicant submits that they received instructions from their client that, they are ready and willing to deposit the entire awarded amount in the Tribunal within four weeks from today. The undertaking is accepted.

4 It is to be noted that in the present proceedings in an accident which occurred on 04.05.2016 the Respondent-Claimant No.1 lost her husband Mahdukar Karbhari Thorkar who was 35 years old. Claimant Nos.2 to 4 are minor and claimant No.5 and 6, parents of the deceased. Considering the fact

that claimant No.1 is housewife and she has to maintain her minor children and claimant Nos.5 and 6 are parents of the deceased, I am of the opinion that they can be permitted to withdraw some amount during pendency of the present appeal.

5 The learned counsel for the applicant submits that the sum of Rs.25000/- deposited by them at the time of filing the First Appeal be transferred to the Tribunal.

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 23.08.2019, 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 12.11.2018 passed by the MACT Thane in MACP 694/2015 and disbursal of amount

thereunder, be kindly stayed."

b. The Respondent claimant No.1 is permitted to withdraw Rs.1,50,000/- with accrued interest without furnishing any security but subject to outcome of the First Appeal.

c. Claimant No.5 and claimant No.6 are permitted to withdraw sum of Rs.25000/- each with accrued interest without furnishing any security but subject to outcome of the First Appeal.

d. 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.

e. 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.

f. The statutory amount of Rs.25000/- deposited by the applicant at the time of filing the First Appeal be transferred to

the Tribunal with accrued interest if any.

g. The Civil Application stands disposed of accordingly.

h. No order as to costs.

(K.K.TATED, J.)