

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 3055 OF 2017
IN
FIRST APPEAL (ST) No. 9232 OF 2017

Bajaj Allianz General Insurance Co. Ltd. ...Applicant
Vs.
Dattatraya @ Dattaram Ganpat Kadam and Ors. ...Respondents

Ms. Yogita M. Deshmukh for Applicant
None for the Respondents

CORAM: K.K. TATED, J.

DATED : JUNE 11, 2019

P.C. :

1. Heard learned counsel Ms. Yogita Deshmukh for the Applicant.
2. Though the Respondents are duly served, no one appeared on behalf of them when the matter was called out.
3. By this Civil Application, the Applicant is seeking stay of the operation and implementation of the judgment and award dated 22nd October, 2016 passed by the Motor Accident Claim Tribunal Raigad at Alibag in MACP No. 63 of 2009 holding that the Respondents/Original Claimants are entitled sum of Rs.6,52,733/- by way of compensation.
4. The learned counsel for the Applicant submits that, in the present proceedings, the accident took place on 14th November, 2008 in which, the Original Claimant sustained injuries. She submits that the Original Claimant has examined the Dr. Narendra Sonba Nehulkar at Exh.44. She submits that Dr. Nehulkar mentioned in his report that the Original Claimant sustained disability to the extent of 40% only.

5. Learned counsel for the Applicant submits that during the pendency of the claim petition, the Original Claimant died on 27th August, 2015. She submits that the Trial Court instead of considering the injury to the extent of 40-%, granted compensation on the basis of death of the victim. Hence, they have good chance of success in the present proceeding.

6. Learned counsel for the Applicant submits that the Insurance Company has already deposited the entire awarded amount in the Tribunal. She submits that if the entire amount is withdrawn by the Respondents/ Original Claimants, then nothing will survive in the present First Appeal. She 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.

7. It is to be noted that the accident occurred on 14th November, 2008, in which, victim Dattatraya @ Dattaram Ganpat Kadam was sustained 40% disability. To that effect, there is a certificate issued by Dr. Narendra Nehulkar, who entered into witness box at Exh.44.

8. Considering these facts, I am of the opinion that the Respondents/Original Claimants are entitled to withdraw 50% of awarded compensation of their share with accrued interest without furnishing any security but subject to outcome of the First Appeal.

9. Hence, following order:

(a) The operation and implementation of the impugned Judgment and Award dated 22nd October, 2016 passed by the Motor Accident Claim Tribunal Raigad at Alibag in MACP No. 63 of 2009 is stayed till

the hearing and final disposal of the First Appeal.

(b) Respondents/Original Claimants are entitled to withdraw 50% of awarded amount, as per their share 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 of any Nationalized Bank, initially for a period of one year and same to be continued till further orders.

(d) Liberty granted to the Original Claimants, if they so desire, to prefer an application for withdrawal of further amount and that application may be heard on its own merits.

(e) Civil Application stands disposed of accordingly.

(f) No order as to costs.

(K. K. TATED, J.)