

Tikam

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

CIVIL APPLICATION No. 2821 OF 2017

IN

FIRST APPEAL (ST) No. 10639 OF 2017

Bajaj Allianz General Insurance Co.Ltd. ... Applicant

Vs.

Mr. Javed Salim Beg and Anr. ... Respondents

Ms. Aditi Athawale i/b. Yogita Deshmukh for Applicant

None for the Respondents

CORAM : SHRI K.K. TATED, J.

DATE : JUNE 14, 2019

P.C.:

1. Heard learned counsel for the parties.

2. By this civil application, the Applicant is seeking stay of the operation and implementation of the judgment and award dated 5th July, 2016 passed by the Motor Accident Claim Tribunal Mumbai in MACP No. 1923 of 2010 holding that the respondent/original claimant is entitled sum of Rs.85,205/- by way of compensation along with interest @ 7.5% p.a. from the date of application till realization.

3. Learned counsel Ms. Aditi Athawale for the Applicant submits that in accident, which occurred on 1st May, 2010, Respondent No.1/Original Claimant sustained some injuries. She submits that on the basis of the said injuries, the original claimant filed claim/ compensation petition under Section 166 of the Motor Vehicles Act. She submits that the Trial Court after considering the evidence on record, held that the insurance company is liable to pay the compensation. The Trial Court in paragraph 15 of the impugned judgment and award has recorded the observation that the insurance company in the written statement raised

objection that the driver of the auto rickshaw was not holding valid and effective driving license at the time of accident. She submits that in view of this fact, the Applicant is not liable to pay any compensation to other side. She submits that they have good chance of success in the present proceeding. She submits that if the entire compensation amount is recovered by the original claimant by filing execution application, then nothing will survive in the present first appeal. She submits that in view of all these facts and circumstances, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award dated 5th July, 2016 till the hearing and final disposal of the first appeal.

4. Learned counsel for the Applicant submits that she received instructions from her client that they are ready and willing to deposit the entire compensation amount along with interest within four weeks in the trial court. The same is accepted.

5. Considering the submissions made by the learned counsel for the Applicant, averments made in the civil application and as the Applicant is ready and willing to deposit the entire awarded amount with interest in the trial court, I am satisfied that the Applicant has made out a case for following order:

ORDER

(i) Civil Application is allowed in terms of prayer clause (a), which reads thus on a condition that the Applicant to deposit the entire awarded amount along with interest in the trial court on or before 12th July, 2019, failing which, civil application shall stand dismissed without referring back to the Court.

“(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 5th July, 2016 passed in the Motor Accident Claim Petition No. 1923 of 2010 passed by the Chairman, Motor Accident Claim Tribunal, Mumbai, and disbursal of amount there under be kindly stayed.”

- (b) If entire amount is deposited by the Applicant- Insurance Company within stipulated time as stated hereinabove, the Tribunal is directed to invest the same in a fixed deposit of Nationalized Bank, initially, for a period of one year and same to be continued till further orders.
- (c) Liberty is granted to the Original Claimant, if he so desires, to prefer an application for withdrawal of the amount and that application to be decided on its own merits.
- (d) Civil Application stands disposed of accordingly.

[K.K. TATED, J.]