

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

**CIVIL APPLICATION NO.3387 OF 2017
IN
FIRST APPEAL (ST) NO.10774 OF 2017**

Bajaj Allianz General Insurance Co. Ltd. ..Applicant

V/s.

Smt.Kusum Bhiva Dhangda & Ors. .. Respondents

Ms.Aditi Athawale I/b Ms.Yogita Deshmukh for the Applicant.

CORAM : K.K. TATED, J.

DATE : 30th JULY 2019

P.C.

1. Heard learned counsel for the applicant.

2. By this Civil Application, the applicant-insurance company is seeking stay of the operation and implementation of the impugned judgment and award dated 29.12.2015 passed by the Motor Accident Claim Tribunal, Palghar in MACP No.21 of 2011 holding that the respondent-claimant are entitled to a sum of Rs.7,48,000/- by way of compensation with interest at the rate of 7% per annum.

3. The learned counsel for the applicant-insurance

company submits that if the entire amount is recovered by the respondent-claimant by filing execution application, then nothing will survive in the present proceeding. She submits that in the present proceedings the Tribunal awarded a compensation on the higher side. She further submits that even Tribunal has not considered their defence about breach of insurance policy. Hence they have a good chance of success in the present proceeding. 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 till the hearing and final disposal of present proceeding.

4. The accident occurred on 14.12.2010. The respondent-claimant lost their son Arjun who was working at village-Nanivali, Taluka-Palghar. He was earning Rs.8,000/- per month and at that time he was 20 years old. Hence, the parents of the deceased-original claimant filed an application under Section 166 of the Motor Vehicle Act claiming the compensation of Rs.1 lakh though their claim was Rs.4 lakhs.

5. Considering the fact that the respondent-claimant lost their young son and both the claimants are working as labourer. I am of the opinion that they can be permitted to withdraw some

amount during the pendency of the First Appeal.

6. Considering the submissions made by the learned counsel for the applicant and the averments made in the Civil Application and as the applicant has made a statement before this Court that the applicant-instance company is ready and willing to deposit entire awarded amount in the Tribunal within four weeks from today. I am satisfied that the applicant has made out case for following order.

ORDER

(i) Civil Application is allowed in terms of prayer clause (a) which 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 29.12.2015 passed by the Learned Member of Motor Accident Claim Tribunal, Palghar, in the Motor Accident Claim No.21 of 2011, and disbursal of amount under be kindly stayed;”

On condition that the applicant-insurance company has deposited the entire awarded amount along with the interest in Tribunal on or before 31.08.2019, failing which Civil Application shall stand

dismissed without referring back to the Court.

(ii) If the amount is deposited within the stipulated time as stated herein above claimant No.1 Smt.Kusum Bhiva Dhangda, claimant No.2 Mr.Bhiwa Jivya Dhangda are entitled to withdraw 20% of the compensation with accrued interest thereon each without furnishing any security but subject to the outcome of the First Appeal.

(iii) The Tribunal is directed to invest the remaining amount in Fixed Deposit in any Nationalized Bank, initially for a period of one year and the same shall be renewed from time to time till further orders.

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

7. The Civil Application stands disposed of accordingly. No order as to costs.

(K.K. TATED, J.)