IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1165 OF 2016
IN
FIRST APPEAL (ST) NO. 11885 OF 2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.

Mr. Sandeep Jinsiwale for the Applicant.

CORAM: K.K.TATED, J.
DATED : 26/08/2019

P.C.

1 Heard learned Counsel for the Applicant.

2 By this Civil Application, the Applicant Insurance Company seeking stay of the operation and implementation of the Judgment and Award dated 08.08.2014 passed by the MACT, Mumbai in Application No. 796 of 2005 holding that the Respondents original Claimants are entitled to a sum of Rs. 2,54,500/- by way of compensation with interest @ 7.5 % p.a. from the date of filing of the application till realisation of the entire amount.

3 The learned Counsel for the Applicant submits that in the present proceeding, the

Tribunal has held that the deceased himself was responsible for the accident and therefore, there is no question of holding Insurance Company liable to pay compensation. He submits that they have good chance of success in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the Judgment and Award passed by the Tribunal. He submits that if entire amount is recovered by the Respondents Claimants in Execution Application, then nothing will survives in this First Appeal.

4 The learned Counsel for the Applicant submits that he received instructions from his client that they are ready and willing to deposit the entire amount with interest within four weeks from today.

5 It is to be noted that in the present proceeding, the accident is occurred on 30.03.2004, the Respondent Claimants lost their son Rahul who was 26 years old on the date of accident. Hence, they filed the application for compensation under Section 166 of the M.V. Act to the extent of Rs.40,00,000/-. The Tribunal held that Respondent Claimants are entitled to only sum of Rs.2,54,500/- with interest @ 7.5%

per annum. Considering this fact, I am of the opinion that Respondents Claimants can be permitted to withdraw the amount, if it is deposited by the Applicant Insurance Company.

6 Hence, the following order is passed:

a) Civil Application is allowed in terms of prayer clause (b) on condition that Applicant to deposit the entire awarded amount with interest in the Tribunal on or before 26.09.2019, failing which Civil Application shall stand dismissed without further reference to the Court. Prayer clause (b), reads thus:

"b) Pending the hearing and final disposal of the present Appeal this Hon'ble Court be pleased to stay the operation, execution, implementation, effect and further proceedings pursuant to the impugned order and Award dated 8th August 2014 passed by the learned Member of MACT Mumbai in MACP No. 796 of 2005."

b) If entire amount is deposited within stipulated time, the Respondents Claimants are entitled to withdraw 30% of amount each with accrued interest without furnishing any security but subject to outcome of the First Appeal.

c) The Tribunal is directed to invest the amount in fixed deposit of any nationalised bank, initially for a period of one year and same to be continued till further order.

d) Liberty is granted to the Respondents-Claimants, if they so desire, to prefer an appropriate application for withdrawal of further amount and that to be decided on its own merits.

f) Civil Application stands disposed of accordingly. No order as to costs.

(K.K.TATED, J.)