

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

**CIVIL APPLICATION NO.3389 OF 2017
IN
FIRST APPEAL (ST) NO.11347 OF 2017**

The New India Assurance Co. Ltd. ..Applicant
V/s.
Mr.Sunil Hira Yadav & Anr. .. Respondents

Mr.D.R. Mahadik 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 is seeking stay to the operation and implementation of impugned order dated 23.06.2016 passed by the Motor Accident Claim Tribunal, Mumbai below Exhibit 2 in Claim Application No.1698 of 2015 allowing the respondent-claimants application under Section 140 of the Motor Vehicle Act directing the insurance company to pay a sum of Rs.25,000/- towards No Fault Liability to the respondent-claimant.
3. The learned counsel for the applicant submits that they

have a good chance of success in the present proceedings. He submits that if the entire amount is recovered by the respondent-claimant, by filing execution application, then nothing will survive in the present proceeding. He submits that in the interest of justice this Hon'ble Court be pleased to stay the operation and implementation of the impugned order and in the interest of justice this Hon'ble Court be pleased to allow the Civil Application.

5. It is to be noted that in the present proceeding the Tribunal has allowed the respondent-claimants application under Section 140 of the Motor Vehicle Act and directed the applicant to pay Rs.25,000/- by way of No Fault liability. During the course of the argument the advocate for the applicant failed to point out, any breach of terms and conditions of the insurance policy. He submitted that the cheque issued by the owner of the vehicle was dishonored in May 2015. The certificate for insurance policy was issued for the period 15.07.2015 to 14.07.2016 and whereas the accident occurred on 26.08.2015.

7. Considering these facts I am of the opinion that the respondent-claimant can be permitted to withdraw the entire amount hence following order.

ORDER

(i) Civil Application is allowed in terms of prayer clause (a) which reads thus :

“(a) That pending the hearing and final disposal of the appeal, the operation of the order under Section 140 of M.V. Act dated 23/06/016 passed by Hon'ble S.R. Pahade, Member, Motor Accident Claim Tribunal, Mumbai in MACT Application No.16698 of 2015 be stayed.”

On condition that applicant-insurance company to deposit the entire awarded amount with interest on or before 16.08.2019 in the Tribunal, failing which Civil Application shall stand dismissed without referring back to the Court.

(ii) If the amount is deposited within stipulated time as stated herein above, respondent-claimant is permitted to withdraw the entire amount without furnishing any security.

(iii) If the amount is not deposited within stipulated time, liberty granted to the respondent-claimant to take appropriate action against the insurance company for recovery of the said amount.

(iv) Registry is directed to transfer a sum of Rs.12,500/- deposited by the applicant at the time of the filing of the First Appeal to the MACT, Mumbai in the account of application No.1698 of 2015 along with accrued interest immediately.

(K.K. TATED, J.)