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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3021 OF 2019
IN
FIRST APPEAL NO.1169 OF 2019

The New India Assurance Co.Ltd. ...Applicant
vs.
Babulal Badarmal Navlakha & Anr. ...Respondents

Ms Aditi Sharma a/w Deepika I/b Res Juris for the Applicant

CORAM : K.K.TATED, J.
DATE : SEPTEMBER 5, 2019

P.C.:

1 Heard learned Counsel for the Applicant.

2 By this Civil Application, the Applicant is seeking stay of the operation and implementation of the Judgment and Award dated 19.10.2018 passed by MACT, Mumbai in MACP No. 670 of 2014 holding that the Respondent original Claimant is entitled to a sum of Rs. 34,71,540/- by way of compensation with interest @ 8% p.a. from the date of filing of the petition till realisation of the entire amount.

3 The learned Counsel for the Applicant submits that the Tribunal awarded compensation on higher side. She further submits that they have good chance of success in the present matter. She submits that pending the final hearing of the First Appeal, this Hon'ble Court be pleased to stay the impugned Judgment and Award passed by the Tribunal. She submits that if stay is not granted and if the entire amount is recovered by the respondent claimant by filing execution application, then nothing will survive in the present proceedings.

4 It is to be noted that in the present proceedings accident which occurred on 22.2.2014, the claimant No.1 lost his wife Smt.Pyaridevi Babulal Navlakha on 6th April 2014. At that time, she was earning near about 27,000/- p.m from the business. Hence, the original claimant filed application under section 166 of the Motor Vehicles Act,1988 claiming compensation.

5 Considering the fact that the claimant No.1 lost his wife on 6th April 2014 because of the accident and she was earning about 27000/- p.m., I am of the opinion that the claimants 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 observations made by the Tribunal in the impugned order, I am satisfied that Applicant has made out a case for allowing this Civil Application.

7 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 27th September 2019 failing which Civil Application shall stand dismissed without further reference to the Court. Prayer clause (b), reads thus:

"b) Pending hearing and final disposal of the first appeal the execution, implementation and operation of judgment and award dated 5.12.2018 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in MACP No.670 of 2014 may kindly be stayed."

b) If the amount is deposited within stipulated time, the respondent No.1 claimant No.1 Babulal Badarmal Navlakha is permitted to withdraw 30% of the amount without furnishing

security, subject to final outcome of the First Appeal.

c) The Tribunal is directed to invest balance 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.

e) Civil Application stands disposed of accordingly.

f) No order as to costs.

(K.K.TATED,J.)