

Tikam

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

CIVIL APPLICATION No. 1505 OF 2019
IN
FIRST APPEAL (ST) No. 12242 OF 2019

National Insurance Co. Ltd.	...Applicant
Vs.	
Smt. Suneeta Dharmendra Prasad @ Harijan and Ors.	...Respondents

Mr. Amol Gatane for Applicant

CORAM : SHRI K.K. TATED, J.

DATE : APRIL 24, 2019

P.C.:

1. Not on Board. At the request of learned counsel for the Applicant, matter is taken on board.
2. Heard learned counsel Mr. Amot Gatane for Applicant.
3. By this civil application, the Applicant Insurance Company is seeking stay of the operation and implementation of the judgment and award dated 25th April, 2018 passed by the Motor Accident Claim Tribunal at Mumbai in M.A.C.P. No. 943 of 2014 holding that the Respondents/ Claimants are entitled compensation of Rs. 7,53,500/- along with interest at the rate of 7% p.a. from the date of petition till realization of the entire amount.
3. Learned counsel for the Applicant submits that the Respondents /Original Claimants filed application for execution in the present proceeding and the next date of that proceeding is 30th April, 2019. Hence there is an urgency. He submits that if the entire

amount is recovered by the Respondents in the execution proceedings, then nothing will survive in the present proceedings. He further submits that he received instruction from his client that they are ready and willing to deposit the entire awarded amount in the Tribunal within four weeks from today. He submits that pending the hearing and final disposal of the First Appeal, operation and implementation of the impugned order may be stayed.

4. It is to be noted that in the present proceedings, the accident had occurred on 6th February, 2014. In the said accident, Respondent No.1- Claimant had lost her husband and Claimant Nos. 2,3 and 4 had lost their father and Claimant Nos. 5 and 6 had lost their son.

5. Considering the fact that Claimant No.1 is housewife and she has to maintain three minor children as well as Claimant Nos. 5 and 6 i.e. father in law and mother in law, I am of the opinion that they are entitled to withdraw some of the amount without furnishing security, because there is a delay on the part of the Insurance Company in filing the present First Appeal by 335 days.

6. Considering the submissions made by the learned counsel for the Applicant and the averments made in the civil application and as the Applicant is ready and willing to deposit the entire amount within four weeks from today, I am satisfied that the Applicant has made out a case for following order:

ORDER

(A) The civil application is allowed in terms of prayer clause (b), which reads thus:

“Your Lordship be pleased to stay the execution, operation and implementation of the impugned Judgment and order/Award

dt.25/4/2018, passed by the Member, M.A.C.T. Mumbai, Dist. Mumbai in M.A.C.P. NO. 943.2014, U/Sec. 166 of the M.V. Act, 1988, till the final hearing and disposal of the First Appeal, as against the Applicant.”

On condition that the Applicant to deposit the entire awarded amount along with interest in Motor Accident Claim Tribunal, Mumbai on or before 31st May, 2019, failing which the civil application stands dismissed without referring back to the Court.

- (B) If the amount is deposited within the stipulated time, Respondent No.1 /Claimant Smt. Suneeta Dharmendra Prasad @ Harijan is entitled to withdraw Rs.5,00,000/- with accrued interest without furnishing any security and Claimant Nos.5 and 6 viz. Mr. Mirja Bujhavan Prasad @ Harijan and Mrs. Murtidevi Mirja Bujhavan Prasad @ Harijan is entitled to withdraw a sum of Rs.75,000/- each with accrued interest without furnishing any surety, but subject to outcome of the First Appeal.
- (C) The Tribunal is directed to invest the remaining amount in the fixed deposit of any nationalized bank initially, for a period of one year and to be continued till further orders.
- (D) The Registry is directed to transfer the sum of Rs.25,000/- deposited by the Applicant at the time of filing of the First Appeal including accrued interest thereon, if any, to the Motor Accident Claim Tribunal, Mumbai in the account of M.A.C.P. No. 943 of 2014 immediately.
- (E) Civil application stands disposed off accordingly.

[K.K. TATED, J.]