

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 2836 OF 2017
IN
FIRST APPEAL (ST) No. 13283 OF 2017

The New India Assurance Co. Ltd. ...Applicant
Vs.
Shri Kishor Gopal Khandakale and Anr. ...Respondents

Ms. Jyoti Bajpayee for the Applicant
None for the Respondents

CORAM: K.K. TATED, J.

DATED : JUNE 14, 2019

P.C. :

1. Heard learned counsel Ms. Jyoti Bajpayee for the Applicant.
2. By this civil application, the Applicant-Insurance Company is seeking stay of the operation and implementation of the judgment and award dated 30th August, 2016 passed by the Motor Accident Claim Tribunal, Dist. Raigad at Alibag in MACP No. 577 of 2007 holding that Respondent No.2 / Original Claimant is entitled compensation to the tune of Rs.2,29,535/- with interest @ 9% p.a.
3. Learned counsel for the Applicant submits that they filed present first appeal, challenging the impugned judgment and award on the basis of quantum and not holding valid and effective driving license of the offending vehicle. She submits that they have good chance of success in the present proceeding. She submits that if the entire amount is recovered by the Original Claimant by filing execution application, then nothing will survive in the present first appeal. Therefore, 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 the first appeal.

4. Learned counsel for the Applicant submits that he received instructions that the Applicant is ready and willing to deposit the entire awarded amount within four weeks from today. The statement is accepted.

5. It is to be noted that in the present case, the accident occurred on 1st March, 2006, in which, Respondent No.2/Original Claimant sustained injuries. He sustained as many as 3 fractures namely fracture on frontal bone extending upto anti frontal fossa, second injury is bosi frontal hemorrhage center and third injury is a cremio clavicular dislocation left side. The Claimant has been spent more than Rs.50,000/- on his medical treatment. At the time of accident, the Original Claimant was 41 years' old. Considering this fact, I am of the opinion that the Original Claimant can be permitted to withdraw some amount with interest thereon without furnishing any security but subject to the outcome of the first appeal as there is a delay on the part of the Applicant to file the present First Appeal. Hence, the following order:

ORDER

(A) Civil Application is allowed in terms of prayer clause (a), which reads thus, on a condition that the Applicant to deposit the entire awarded amount along with interest thereon, on or before 12th July, 2019, failing which, Civil Application shall stand dismissed without referring back to the Court.

“(a) pending the hearing and final disposal of the above

First Appeal execution, implementation or operation of the order and judgment passed against Applicants by Honorable Ex-Officio Member, MACT, RAIGAD- ALIBAG be stayed on such terms and conditions as this Honorable court deem fit and proper.”

- (B) If the entire amount is deposited within stipulated time as stated hereinabove, Respondent No.2- Original Claimant can withdraw 40% amount along with interest accrued thereon without furnishing any security, but subject to the outcome of the first appeal.
- (C) The Tribunal is directed to invest the remaining amount in a fixed deposit of any Nationalized Bank, initially, for a period of one year and to be continued till the further orders.
- (D) Liberty is granted to Respondent No.2/Original Claimants, if he so desires, to prefer an application for withdrawal of the further amount and that application may be decided on its own merits.
- (E) Civil Application stands disposed of accordingly.
- (F) No order as to costs.

(K. K. TATED, J.)