

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2312/2012
IN
FIRST APPEAL NO.1137/2015

Municipal Corporation for
Greater Mumbai.

.... Applicant

Vs.

Dattatray P. Devkar

... Respondent.

Advocate Ms Shradhha Chheda I/b M/s Navdeep Vora & Ass.
For appellant.

Advocate Mr.T.J. Mendon for respondent.

CORAM : K.K.TATED, J.

DATED : JULY 18, 2019.

P.C.

Heard learned counsel for parties.

2. By this civil application, the applicant is seeking stay of operation and implementation of judgment and award dated 7.9.2011 passed by MACT,Mumbai in M.A.C. Application no.3453/2006, holding that, respondent/claimant is entitled sum of Rs.2,87,000/- by way of compensation with interest 7.5% pa.

3. Learned counsel for applicant submits that the

Tribunal erred in coming to conclusion that the bus driver was responsible for accident just because applicant had held departmental enquiry against him. She relies in the matter of **Raphik Mehboob Vs. Anantkumar P. Jajal 1996(2) Bom CR 541**. She submits that they already deposited entire awarded amount in the tribunal. He submits that pending hearing and final disposal of first appeal, this court be pleased to stay operation and implementation of impugned judgment and award. She submits that, if entire amount is withdrawn by the respondent, then nothing will survive in the proceeding. She submits that if stay is not granted irreparable loss would be caused to applicant. She submits that they have good chance of success.

5 On the other hand, learned counsel for respondent opposed present application. He submits that though the accident occurred on 3.11.2006 till today claimant has not received any compensation. He submits that respondent may be permitted to withdraw the amount deposited by applicant during the pendency of first appeal.

6 Heard both sides at length. It is to be noted that in the present proceeding, the respondent sustained injury in an accident. Because of that, he was admitted in Hospital

from 6.11.2006 to 20.11.2006 and was operated there. He spent more than Rs.15,000/- for treatment. Because of accident the respondent sustained disability upto 45%.

7. Considering the submissions made by learned counsel for applicant, and averments made in application, I am satisfied that applicant shall be permitted to withdraw some amount during pendency of first appeal. The judgment cited by learned counsel for applicant is not applicable in the present case. Admittedly, respondent sustained injury and was admitted in the Hospital from 6.11.2006 to 20.11.2006.

Hence, the following order.

A) Civil application allowed in terms of prayer clause (a) which reads thus,

a) Pending the hearing and final disposal of this appeal, the impugned Judgment and Order dated 7.9.2011 passed by the Motor Accident Claims Tribunal, at Mumbai in Motor Accident Claim Application No.3453/2006 directing the appellant undertaking to pay a sum of Rs.2,87,000/- with interest @ 7.5 % pa be stayed.

B) Respondent Dattatraya Pandurang Devkar is permitted to withdraw 50% amount with accrued interest

without furnishing any security but subject to outcome of first appeal.

C) Tribunal is directed to invest remaining amount in a Fixed Deposit in any Nationalized bank, initially for a period of one year and thereafter same be continued till further orders.

D) Civil application is disposed of.

E) No order as to cost.

(K.K.TATED, J.)

