

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.3484/2019
in
First Appeal (ST) No.13554/2019

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. Ketan Joshi for the Applicant

CORAM: K.K.TATED, J.
DATED : OCTOBER 18, 2019

P.C.

1 Pursuant to the praecipe filed by the learned counsel for the Applicant, the matter is taken on production board.

2 The learned counsel for the Applicant submits that they have already served a copy of the Civil Application and the entire proceedings on the advocate who filed caveat on behalf of the Respondent and also gave notice of today's production. He undertakes to file Affidavit of Service to that effect on or before 22.10.2019. The statement is accepted.

3 By this application the Applicant Insurance Co. is seeking stay to the judgment and award dated 17.12.2018 passed by the MACT, Pune in MACP

No.299/2016 holding that the Respondents claimants are entitled to sum of Rs.77,58,200/- by way of compensation with interest @ 7% p.a.

4 The learned counsel for the Applicant submits that if the entire amount is recovered by the Respondent-Claimant by filing execution application, then nothing will survive in the present proceedings. He submits that they have good chance of success in the matter.

5 The learned counsel for the Applicant submits that the Tribunal has awarded compensation on higher side. He submits that pending the hearing and final disposal of the First Appeal, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award. He submits that if stay is not granted irreparable loss will be caused to them.

6 In the present proceedings in an accident which occurred on 25.01.2016, the claimant lost his wife Aditi Prasad Kulkarni who was 40 years old. The deceased was M.Sc. (Botany) and was pursuing her Ph.D. in Botany. She was working as an Associate Professor in

Modern College of Arts and Science and was earning Rs.57,651/- pm salary. She was a confirmed in service in 2014. On the basis of these facts, the Respondent-Claimant had filed application u/s.166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.2 crores. The Tribunal has awarded sum of Rs.77,58,200/-.

7 Considering the fact that the claimant No.1 has lost his wife and claimant No.2 his mother, I am satisfied that the claimant No.1 can be permitted to withdraw some amount during pendency of the First Appeal.

8 Hence, following order is passed:

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

“(b) Pending the hearing and final disposal of the First Appeal and Civil Application, this Hon’ble Court be pleased to pass an order, thereby staying the implementation, execution and operation of the impugned judgment and award dated 17.12.2018 passed by learned MACT Pune in MACP No.297/2016.”

b. Respondent claimant No.1 Prasad Vasant Kulkarni is permitted to withdraw sum of Rs.10 lacs with accrued

interest without furnishing any security but subject to outcome of the First Appeal.

c. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

d. Liberty granted to the claimants to prefer an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits

e. The Civil Application stands disposed of accordingly.

f. No order as to costs.

g. Amount of Rs.25000/- deposited by the Applicant at the time of filing the First Appeal be transferred to the MACT, Pune, in the account of MACP No.297/2016.

(K.K.TATED, J.)