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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2758 OF 2019
IN
FIRST APPEAL NO.1102 OF 2019

The New India Assurance Co.Ltd. ...Applicant
vs.
Devendra Hiralal Mistry & 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. 67 of 2010 holding that the Respondent original Claimant is entitled to a sum of Rs. 1,27,000/- by way of compensation with interest @ 7.5 % 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 erred in coming to the conclusion that Insurance Company is liable to pay compensation though they have brought on record evidence to the effect that the insurance policy is fake.

4 The learned counsel for the applicant submits

that if entire amount is recovered by the Respondents Claimants in Execution Application, then nothing will survives in this First Appeal. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the Judgment and Award passed by the Tribunal.

5 It is to be noted that in the present proceedings accident which occurred on 14.12.2009, the respondent original claimant sustained several injuries. Doctor certified 49% disability. To that effect that the respondents claimants placed on record documentary evidence i.e Exhibit 23. In view of this fact, the respondent claimant filed claim application under section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.50,00,000/-. The Tribunal awarded a sum of Rs.1,27,000/- with interest @ 7.5%.

6 Considering the disability certificate at Exhibit-23, I am of the opinion that the respondent original claimant can be permitted to withdraw some amount during the pendency of the First Appeal.

7 Considering the submissions made by the learned Counsel for the Applicant and observations made by the Tribunal, I am satisfied that Applicant has made out a case for allowing this Civil Application.

8 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 19.10.2018 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in MACP No.67 of 2010 may kindly be stayed."

b) If the amount is deposited within stipulated time, the respondent claimant Devendra Hiralal Mistry is permitted to withdraw 50% of the amount without furnishing security subject to final outcome of the First Appeal.

c) The Tribunal is directed to invest the 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 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.)