

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.1982/2019
in
First Appeal No.668/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Ms. Shalini Shankar for the applicant	

CORAM : K.K.TATED, J.
DATED : JUNE 10, 2019

P.C.

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

2 By this civil application, the applicant insurance company is seeking stay to the operation and implementation of the judgment and award dated 01.01.2019 passed by the MACT Thane in MACP No.1/2016 holding that the Respondent - claimants are entitled to sum of Rs.26,15,000/- by way of compensation along with interest @ 18% p.a.

3 In the present proceedings, in the accident which occurred on 09.12.2015 Mustkeen Auliya Hasan @ Ali Hasan Khan died. Hence, the respondent claimants filed the petition u/s.166 of the Motor Vehicles Act, 1988 for compensation.

4 The learned counsel for the applicant submits that the respondents claimant has filed execution application in the trial court wherein an attachment warrant dated 30.03.2019 came to be issued. She submits that if the entire awarded amount is recovered in the execution proceedings, nothing will survive in the present proceedings. She submits that there is breach of insurance policy. Hence, there is no question of holding the applicant liable to pay compensation. She submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award. She submits that if stay is not granted irreparable loss will be caused to them.

5 It is to be noted that in the present proceedings, the respondent - claimant lost Mustkeen Auliya Hasan @ Ali Hasan Khan.

He was earning Rs.20,000/- pm. from his business. Considering these facts and the evidence on record, the Tribunal held that the claimants are entitled to sum of Rs.26,15,000/- by way of compensation.

6 As the Insurance Company has failed to deposit the entire compensation in the tribunal, the original claimant has filed execution application in which attachment warrant came to be issued.

7 Considering the fact that the applicant has to maintain her minor child and as claimant No.1 is a widow and claimant No.3 is mother of deceased and as she is a housewife, they can withdraw sum of Rs.4 lacs each with accrued interest without furnishing any security, subject to outcome of the first appeal.

8 Hence, following order is passed:

a. The civil application is allowed in terms of prayer clause (a) which is reproduced below, subject to the applicant depositing the entire awarded amount in the tribunal on or before 29.06.2019, failing which the civil application shall stand dismissed without

further reference to the court.

b. If the amount is deposited as stated hereinabove, the claimant Nos.1 to 3 are entitled to withdraw sum of Rs.4 lacs each with accrued interest without furnishing any security, subject to outcome of the first appeal.

c. The Tribunal is directed to invest the remaining amount in a fixed deposit of any Nationalised Bank, initially for a period of one year which shall be renewed from time to time till further orders.

d. The respondent - claimants are at liberty to take out appropriate application for withdrawal of the further amount which shall be decided on merits.

e. The Civil Application stands disposed of accordingly.

(K.K.TATED, J.)