

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2594/2019
in
First Appeal (ST) No.14475/2019

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

CORAM : K.K.TATED, J.
DATED : JULY 31, 2019

P.C.

1 Heard. By this Application the Applicant is seeking stay to the operation and implementation of the impugned judgment and award dated 07.12.2018 passed by the MACT, Mumbai in Claim Application No.1992/2010 holding that the Respondent claimant is entitled to sum of Rs.5,02,000/- by way of compensation inclusive of NFL with interest @ Rs.7.5% p.a.

2. The learned counsel for the Applicant submits that while awarding the compensation, the Tribunal has failed to consider the fact that there was breach of terms and conditions of insurance policy. She submits that in fact the

insurance policy was cancelled by them. To that effect, they examined their office Mr. Hemant Bhosale, D.W.1 who produced a cover note booklet Exhibit-62. She submits that in spite of these facts, the Tribunal held that the Insurance Company is liable to pay compensation.

3 The learned counsel for the Applicant submits that if entire awarded amount is recovered by the claimant in the Execution Application, nothing will survive in the present proceedings. She submits that they have good chance of success in the matter. She submits that pending the hearing and final disposal of the First Appeal, the operation and implementation of the impugned judgment and award be stayed. She submits that she received instructions from her client that they are ready and willing to deposit the entire awarded amount with interest on or before 31.08.2019. The statement is accepted.

4 In the present proceedings, in an accident which occurred on 14.07.2018 the Respondent - Claimant sustained several injuries. At that time he was 31

years old and was doing business as a Surveyor and was earning Rs.21000/-pm. Hence, he had filed Application u/s.166 Motor Vehicles Act, 1988 and claimed compensation to the tune of Rs.10 lacs. In support of his contention, the claimant has placed on record a disability certificate dated 25.11.2011 Exhibit- 37 issued by Dr. S. R. Mukhi, M.S. Orthopedic stating that the Respondent-Claimant sustained permanent partial disability to the extent of 30%.

5 Considering these facts, as there is a delay on the part of the Insurance Co. in filing the First Appeal and as the Respondent-Claimant was indoor patient in Raj Hospital, Mulund from 15.07.2010 to 27.07.2010 I am of the opinion that the claimant can be permitted to withdraw some amount during pendency of the First Appeal.

6 Hence, following order is passed:

a. The Civil Application is allowed in terms of prayer clause (a) subject to the Applicant depositing the entire awarded amount along with interest and costs in

the Tribunal on or before 31.08.2019 failing which the Civil Application shall stand dismissed without further reference to the court. Prayer clause (a) reads thus:

“(a) Pending the hearing and final disposal of the present First Appeal, this Hon'ble Court be please to stay the effect, implementation and or execution of the impugned judgment and order dated 07.12.2018 passed by the Hon'ble Court of Member, in Motor Accident Claim Petition No.1992 of 2010.”

b. If the amount is deposited within stipulated time as stated hereinabove, the Respondent-Claimant is entitled to withdraw 35% of the said compensation 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.

(K.K.TATED, J.)