

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2156/2019

in

First Appeal (ST) No.14522/2019

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

Court's or Judge's orders.

Mrs. Shalini Shankar for the Applicant

CORAM : K.K.TATED,J.
DATED : JUNE 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 By this Civil Application, the Applicant Insurance Co. is seeking stay to the operation and implementation of the impugned judgment and award dated 19.11.2018 passed by the MACT, Pune in MACP No.60/2006 holding that the Respondent-Claimants are entitled to sum of Rs.11,74,850/- by way of compensation with interest @ 7.5% p.a.

3 The learned counsel for the Applicant submits that the Respondent-Claimants have filed Execution Application in which an attachment warrant has already been

issued by the executing court. She submits that if the entire 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.

4 The learned counsel for the Applicant submits that in the present proceedings at the time of awarding compensation payable to the claimant, the Tribunal has failed to consider the contributory negligence and also the fact that the deceased himself was responsible for the accident. Therefore, the Insurance Co. is not liable to pay compensation.

5 The learned counsel for the Applicant submits that she received instructions from their client that ready and willing to deposit the entire awarded amount in the Tribunal within three weeks from today. The undertaking is accepted.

6 It is to be noted that in an accident which occurred on 11.05.2005 the claimant No.1 lost her husband Rajendra Atmaram Baviskar. On the date of accident the deceased was 30 years old and was working in Pune Police Commissionerate as

Constable. Hence, the Respondents had filed claim application u/s.166 of the Motor Vehicles Act claiming compensation of Rs.10 lacs. Claimant No.2 is a minor son and claimant No.3 is a senior citizen.

7 Considering the reasons given by the Trial Court, I am of the opinion that claimant Nos.1 to 3 may be permitted to withdraw some amount 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) subject to the Applicant depositing the entire awarded amount along with interest and costs in the Tribunal on or before 10.07.2019, 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 19.11.2018 passed by the Hon’ble Court of Member, in MACP No.60/2006.”

b. If the awarded amount is deposited within stipulated time as stated

hereinabove, claimant No.1 Shubhangi Rajendra Baviskar is entitled to withdraw sum of Rs.3 lacs and claimant No.2 Mast. Piyush Rajendra - Rs. 1 lacs along with accrued interest, without furnishing any security, subject to outcome of the First Appeal

c. The Tribunal is directed to invest sum of Rs.5 lacs in a Fixed Deposit of any Nationalized Bank, in the interest of claimant No.2 Master Piyush Rajendra Baviskar.

d. Claimant No.1 Smt. Shubhangi Rajendra Baviskar is entitled to withdraw quarterly interest of Rs.5 lacs for and on behalf of claimant No.2 Master Piyush Rajendra Baviskar for his welfare.

e. 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.

f. 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.

g. The Civil Application stands disposed of accordingly.

(K.K.TATED, J.)