

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 3179 OF 2019
IN
FIRST APPEAL (ST.) NO. 14745 OF 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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Kalpana Trivedi for the Applicant.

**CORAM: K.K.TATED, J.
DATED : OCTOBER 1, 2019**

PC.

1 Heard learned Counsel for the Applicant.

2 By this Civil Application, the Applicant/Insurance Company is seeking stay of the operation and implementation of the Judgment and award dated 02/11/2018 passed by the Motor Accident Claims Tribunal, Raigad in Motor Accident Claim Petition No. 218/2010 holding that the Respondent/Original Claimants are entitled to sum of Rs.50,250/- by way of compensation with interest @ 7.5% p.a.

3. The Learned Counsel for the Applicant submits that, in the present proceeding, the

insurance policy insured for offending vehicle was withdrawn/cancelled for some technical reason. This fact was not considered by the Tribunal at the time of holding that the insurance company is liable to pay the compensation. Hence, they have good chance of success in the present proceeding.

4. The Learned Counsel for the Applicant 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 passed by the Tribunal. She further submits that if the entire amount is recovered by the Respondent/Original Claimants by filing execution application then nothing will survive in the present proceeding.

5. It is to be noted that, in the present proceeding in the accident which occurred on 09/06/2009, the Respondent/Original Claimant sustained fracture injuries. Therefore, he was admitted in the hospital at Panvel. As per contention of Claimant, he spent Rs. 3,50,000/- towards the medical expenses. At that time he was studying and

assisting parents in their work. Because of the accident the Claimant sustained the permanent disability. Therefore, the Claimants filed the Claim Petition under Section 163 A of the Motor Vehicles Act, 1958 claiming the compensation to the tune of Rs. 3,00,000/- with interest.

6. Considering the facts and the impugned Judgment and award passed by the MACT under Section 163 A of the Motor Vehicles Act, 1958 and as there is a delay on the part of the Applicant to file the present First Appeal, I am of the opinion that the Claimants can be permitted to withdraw some amount. Hence, the following order:

a. Civil Application is allowed in terms of prayer clause (a) on a condition that the Applicant to deposit the entire awarded amount along with interest in the Tribunal on or before 18/10/2019, failing which, 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 first appeal this Hon’ble Court be an order of stay may kindly stay the operation, implementation and execution of the judgment and order dated 02/11/2018

passed by Shri. R.V. Lokhande, Member-MACT, Raigad in MACP No. 218/2010.”

- b. If the amount is deposited within the time, the Respondent/Original Claimant Kiran Krishna Tatkare is entitled to withdraw 60% amount 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 of any Nationalized Bank, initially for a period of one year which shall be renewed from time to time till further orders.
- d. The Respondent/Original Claimant is granted liberty to take out appropriate application for withdrawal of further awarded amount which shall be decided on merits on its own merits.
- e. Civil Application stands disposed of accordingly.
- f. No order as to costs.

(K.K.TATED, J.)