

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Application No.2811/2019

in

First Appeal (ST) No.14793/2019

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

Court's or Judge's orders.

Mr. Nikhil Mehta i/b .KMC Legal Venture
for the Applicant

CORAM: K.K.TATED, J.

DATED : AUGUST 13, 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 judgment and award dated 24.09.2018 passed by the MACT, Mumbai in MACP No.1244/2013 holding that the Respondents are entitled to sum of Rs.11,65,000/- by way of compensation with interest @ 9% p.a. from the date of institution of the claim application i.e. 17.07.2013 till realisation of the amount.

3 The learned counsel for the

Applicant submits that in the present proceedings the cheque issued by the owner of the offending vehicle towards insurance policy was dishonoured. Thereafter the same was informed by the Insurance Co. to the owner by registered post within 11 days from the date of issuing insurance policy. These facts are not considered by the Tribunal while passing the impugned order. He submits that they have good chance of success in the matter. He submits that if stay is not granted irreparable loss will be caused to them. He 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.

4 The learned counsel for the Applicant submits that they are ready and willing to deposit the entire awarded amount within four weeks from today. The statement is accepted.

5 In the present proceedings in an accident which occurred on 02.03.2013 the claimant had lost her husband who was 48 years. On the date of accident, he was earning Rs.9000/- pm by driving

auto rikshaw. Hence, the claimant had filed an application u/s.166 of the Motor Vehicles Act, 1988 claiming sum of Rs.10 lacs by way of compensation.

6 It is to be noted that there is delay on the part of the Insurance Co. to file the First Appeal. Considering these facts, I am of the opinion that the Respondent-Claimant can be permitted to withdraw some amount with accrued interest without furnishing any security but subject to outcome of the First Appeal.

7 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 13.09.2019, failing which the Civil Application shall stand dismissed without further reference to the court. Prayer clause (a) reads thus:

“(a) That this Hon’ble Court be pleased to stay the execution judgment and award dated 24.09.2018 passed in MACT application No.1244 of 2013 by Learned Member M.S. Mungale, Member MACT Mumbai @ Mumbai.”

b. If the amount is deposited within stipulated time as stated hereinabove, the claimants are entitled to withdraw the amount, as under, with accrued interest without furnishing any security but subject to outcome of the First Appeal.

Claimant No.1 Indu Ashok Singh 10%
Claimant No.2 Amit Ashok Singh - 5%
Claimant No.3 Abhishek Ashok Singh 5%
Claimant No.4 Smt. Sona Shivbadai Singh 5%

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.)