

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 2239 OF 2019
IN
FIRST APPEAL (ST) No. 16160 OF 2019

Cholamandalam M.S. General
Insurance Co. Ltd. ...Applicant

Vs.
Kum.Simran Arif Pathan
and Ors. ...Respondents

Mrs. Deepika Prabhala i/b. Res Juris for the
Applicant

CORAM: K.K. TATED, J.

DATED : JUNE 26, 2019

P.C. :

1. Not on board. Upon mentioning, the matter is taken on board for urgent orders.
2. Heard learned counsel Mrs. Deepika Prabhala for the Applicant.
3. By this application, the Applicant is seeking stay of the operation and implementation of the judgment and award dated 16th October, 2018 passed by the Motor Accident Claim Tribunal, Nashik in Claim Application No.716/2014, holding that the Respondents/Claimants are entitled sum of Rs.

42,91,920/- by way of compensation with interest @ 8% p.a.

4. Learned counsel for the Applicant submits that there is an urgency in the present matter. She submits that the respondents/Claimants filed execution application for recovery of the entire awarded amount. She submits that in the present proceeding, they are challenging the judgment and award passed by the tribunal merely on the issue of quantum. The tribunal has awarded the compensation at higher side.

5. The learned counsel for the Applicant submits that they have good chance of success in the present proceeding. She submits that if the entire amount is recovered by the Original Claimant in execution application, then nothing will survive in the present first appeal. Therefore, in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award till the hearing and final disposal of the first appeal.

6. Learned counsel for the Applicants submits

that, she received instructions from her clients that, the Applicants are ready and willing to deposit the entire awarded amount I MACT, Nashik within four weeks from today. The statement is accepted.

7. It is to be noted that in the present case, the accident occurred on 2nd January, 2014, in which, Claimant No.1 lost her father. On the date of accident, the deceased was 43 years' old and he was running a readymade garment shop in the name of 'Simran Rady-mde Garments'. He was earning Rs.1,66,680/- per annum. Considering these facts and as there is a delay on the part of the Applicant to file First Appeal, I am satisfied that the respondents/Original Claimants can be permitted to withdraw some amount without furnishing any security, but subject to outcome of the First Appeal.

8. Hence, following order:

ORDER

(A) Civil Application is allowed in terms of prayer clause (b), which reads thus, on a

condition that the Applicant to deposit the entire awarded amount along with interest thereon, on or before 25th July, 2019, failing which, Civil Application shall stand dismissed without referring back to the Court. Prayer clause (b), which reads thus:

"(b) Pending hearing and final disposal of the first appeal the execution, implementation and operation of judgment and award dated 16.10.2018 passed by the Learned Member, Motor Accident Claims Tribunal, Nashik in MACP No. 716/2014 may kindly be stayed."

(B) If the entire amount is deposited within stipulated time as stated hereinabove, Respondent No.2- Tabassum Ekbal Shaikh is entitled to withdraw 25% amount with accrued interest thereon without furnishing any security for the benefit of Claimant No.1, but subject to the 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 and to be continued till the further orders.

(D) Liberty is granted to Respondents/Original Claimants, if they so desires, to prefer an application for withdrawal of the further amount and that application may be decided on its own merits.

(E) Civil Application stands disposed of accordingly.

(F) No order as to costs.

(K. K. TATED, J.)