

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

**CIVIL APPLICATION NO.2678 OF 2019
IN
FIRST APPEAL (ST.) NO.16608 OF 2019**

Bharti AXA General Insurance
Company Limited

... Applicant

Versus

Mrs. Tejal Sanket Lakhani
and Others

... Respondents

.....

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

.....

CORAM : K. K. TATED, J.

DATE : 29 JULY 2019

P. C. :

. Heard Mr. Rahul Mehta, learned Counsel appearing for the Applicant.

2 At the request of learned Counsel for the Applicant, the matter is taken on production board for an urgent orders.

3 Learned Counsel appearing for the Applicant submits that the Respondents/claimants have filed execution application, hence, there is an urgency in the matter. He submits that if the entire amount is recovered by the Respondents/claimants in execution application, then nothing will survive in the present proceedings.

4 Learned Counsel for the Applicant submits that by this civil application, they are seeking stay to the operation and implementation of the impugned judgment and award dated 4 June 2018 passed by M.A.C.T., Mumbai in M.A.C. Application No.813 of 2015, holding that the Respondents/claimants are entitled to a sum of Rs.43,67,152/- by way of compensation and interest at the rate of 8 per cent per annum.

5 Learned Counsel for the Applicant submits that in the present proceedings, the Respondents/claimants are entitled for compensation of more than Rs.44,00,000/-. He submits that Mr. Sanket Lakhani was on probation in service. In spite of that, the Court has passed award more than of Rs.44,00,000 by way of compensation. In support of his contention, he relies on paragraph-14 of the impugned judgment dated 4 June 2018, which reads this :

“On perusal of employment letter placed on record, Sanket Lakhani was a probationer at the time of accident. After completion of six months’ period of probation, he was to be confirmed in employment. There were terms that despite completion of probation period, future increase in annual package salary and future prospects shall not be automatically but shall entirely depend on his performance, sincerity, good conduct and financial result of company. Even after confirmation in service, it was open for either party to terminate the employment by giving the other atleast one month prior written notice or payment in lieu of such notice. It means Sanket Lakhani has had joined the employment on fixed salary and he was not permanent employee at the time of accident.”

6 Learned Counsel for the Applicant submits that they have good chance to succeed in the present proceedings. He submits that in the interest of justice, this Court be pleased to stay the operation and implementation of the impugned judgment and award, till the hearing and disposal of the First Appeal.

7 It is to be noted that in the present proceedings on 19 April 2015, Claimant No.1 lost her husband, claimant No.2 is son of deceased and Claimant Nos.3 and 4 are the parents of the deceased.

8 Considering the fact that Claimant No.1 have to maintain her minor child and Claimant Nos.3 and 4 are senior citizens, I am of the opinion that they can be permitted to withdraw some amount, subject to outcome of the First Appeal. Hence, the following order is passed.

: O R D E R :

i) The Civil Application is allowed in terms of prayer clause-(a), which reads thus :

“That this Hon’ble Court be pleased to stay the execution Judgment and Award dated 4 June 2008 passed in M.AC.T. Application No.813 of 2015 by Learned Member A.A. Bhatkar, Chairman, MACT Mumbai.”

on condition that the Applicant shall deposit the entire compensation amount on or before 30 August 2019 in

Tribunal, failing which, the Civil Application shall stand dismissed without further reference to the Court;

ii) If the amount is deposited within stipulated time as as stated above, Claimant No.1 Tejal Sanket Lakhani is entitled to withdraw an amount of Rs.5,00,000/-, Claimant No.3 Mr. Lalitbhai Laxmidas Lakhani is entitled to Rs.3,00,000/- and Claimant No.4 Mrs. Kailash Lalit Lakhani is entitled to withdraw Rs.3,00,000/- with accrued interest without furnishing any security, but subject to outcome of the First Appeal ;

iii) Tribunal is directed to invest the remaining amount in a fixed deposit of any Nationalized Bank, initially for a period of one year and the same to be continued thereafter till further orders ;

iv) Liberty is granted to the Respondents/original claimants, if they so desire, to prefer appropriate application for withdrawal of further amount and that will be decided on its own merits ;

v) The Civil Application is disposed of accordingly ;

vi) No order as to costs.

(K. K. TATED, J.)