

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

**CIVIL APPLICATION NO. 3193 OF 2019
IN
FIRST APPEAL NO. 1341 OF 2019**

Reliance General Insurance Company Ltd. Applicant.

Vs.

Divya Deepak Kamble & Ors. Respondents.

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

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**CORAM : K.K.TATED, J.
DATED : SEPTEMBER 24, 2019**

PC.

1 Today the matter is shown on production board pursuant to the praecipe dated 23rd September 2019 filed by the advocate for the Applicant.

2. Heard Learned Counsel for the Applicant.

3. The Learned Counsel for the Applicant submits that, the Respondents/Original Claimants filed execution application for recovery of the entire amount. He submits that, the next date before the executing court is 01st October, 2019. Hence, there is urgency.

4. By this Civil Application, the Applicant-Insurance Company is seeking stay of the operation and implementation of the Judgment and award dated 22nd February, 2019 passed by the Motor Accident Claims Tribunal Mumbai in Motor

Accident Claim Petition No. 2180 of 2014 holding that the Respondents/Original Claimants are entitled to sum of Rs. 31,72,000/- by way of compensation with interest @ 7.5% p.a.

5. The Learned Counsel for the Applicant submits that, in the present proceeding the Applicant-Insurance Company brought on record the fact that there was breach of terms and conditions of insurance policy i.e. driver of the insured vehicle was not holding valid license. In spite of that, the Tribunal held that the Insurance was also liable to pay the compensation. He submits that they have good chance of success in the present matter. 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 Judgment and award passed by the Tribunal.

6. The Learned Counsel for the Applicant submits that, if the entire amount is recovered by the Respondents/Original Claimants in execution application, then nothing will survive in the present proceeding.

7. It is to be noted that in accident which occurred on 6th November, 2014 the Respondent/Original Claimant No. 1 lost her husband Deepak Kamble who was working in Excise Department of the Government of Maharashtra and was earning the salary of Rs. 20,000/- per month. Hence, the Respondents/Original Claimants filed claim petition under Section 166 of the Motor Vehicles Act,

claiming the compensation of Rs. 50,00,000/- but the Tribunal has awarded sum of Rs. 31,72,000/-.

8. Considering these facts and as the Respondent/Original Claimant Nos 2, 3 and 4 are minors and Claimant No. 5 mother of the deceased is senior citizen, I am satisfied that the Respondents can be permitted to withdraw some amount without furnishing any security but subject to outcome of the First Appeal. Hence, the following order is passed:

- a. Civil Application is allowed in terms of prayer clause (a) on a condition that the Applicant to deposit the entire awarded amount with interest on or before 11/10/2019, failing which 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 effect/execution/operation and implementation of the Judgment and award dated 22/02/2019 passed in M.A.C.T. Application No. 2180 of 2014 by Mr. R. S. Aradhye, Member, MACT Mumbai @ Mumbai.”

- b. If the amount is deposited within time, the Respondents/Original Claimants are permitted to withdraw the following amount with accrued interest without furnishing any security but subject to outcome of the First Appeal.
 - i. Mrs. Divya Dipak Kamble - 5,00,000/- with accrued interest.
 - ii. Miss Darshana Deepak Kamble – 1,00,000/- with accrued interest.
 - iii. Smt. Suman Kishor Kamble – 2,00,000/- with accrued interest.

- 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 which shall be renewed from time to time till further orders.
- d. Liberty is granted to the Respondents/Original Claimants if they so desire to prefer an appropriate application for withdrawal of further amount and that will be decided on its own merits.
- e. Civil Application stands disposed of accordingly.
- f. No order as to costs.

(K.K.TATED, J.)