

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

**CIVIL APPLICATION NO.2471 OF 2019
IN
FIRST APPEAL NO.985 OF 2019**

Tata AIG General Insurance
Company Limited

... Applicant

Versus

Indubai Deshmukh
And Others

... Respondents

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

.....

CORAM : K. K. TATED, J.

DATE : 29 JULY 2019

P. C. :

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

2 Today the matter is taken on production board pursuant to a praecipe dated 26 July 2019 filed by learned Counsel for the Applicant for an urgent orders.

3 Learned Counsel for the Applicant submits that today's notice was duly served on the other side. To that effect, he undertakes to file an affidavit of service.

4 Though served, no one appeared on behalf of the Respondents.

5 Learned Counsel for the Applicant submits that there is an urgency in the present matter, because the Respondents/original claimants have filed execution application, in which, the attachment warrant is issued by the executing court.

6 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 11 March 2019 passed by MACT, Pune in MACP No.477 of 2016, holding that the Respondent/Claimant No.1 is entitled to a sum of Rs.18,44,000 by way of compensation with interest at the rate of 7 per cent per annum on the date of filing of the claim application till realization of the entire amount.

7 Learned Counsel for the Applicant submits that the in the present proceedings, the tribunal awarded compensation on higher side. He submits that he received instructions from his client that they are ready and willing to deposit with Registry the entire awarded amount with interest on or before 23 August 2019. The statement is accepted.

8 Learned Counsel for the Applicant submits that pending the hearing and final disposal of the First Appeal, this Court, stay the operation and implementation of the impugned judgment and award passed by the Tribunal. He submits that if the entire amount is recovered by the Respondents/claimants, then nothing will survive in the present proceedings.

9 It is to be noted that in the present proceedings, on 28 April 2016, Claimant No.1 lost her son Ramesh Dasu, who was 22 years old. At that time, he was doing agriculture as well as milk business. The deceased was earning Rs.12000 to Rs.15000 per month from milk business and Rs.1,75,000 to Rs.2,00,000 per annum from agriculture. On the basis of these facts, the Respondents/Claimants filed claim petition under Section 166 of the Motor Vehicle Act. The tribunal after considering evidence on record held that Claimant No.1-mother of the deceased is entitled for compensation to the tune of Rs.18,44,000/-.

10 Considering these facts and as Claimant No.1-mother lost her son of 22 years of age, who was doing agriculture activities as well as dealing in milk business, I am of the opinion that Claimant No.1 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.

: O R D E R :

i) The civil application is allowed in terms of prayer clause-(a) which reads as follows, on condition that the Applicant-Insurance Company shall deposit with the Registry the entire awarded amount along with interest on or before 23 August 2019, failing which, the Civil Application shall stand dismissed without further reference to the Court. Prayer clause -(a) reads thus :

“That this Hon’ble Court be pleased to stay the Effect/Execution/Operation and Implementation of the Judgment and Award dated 11 March 2019 passed in M.A.C.T. Application No.477 of 2016 by Anuruddha Y. Thatte, Addl. Member, M.A.C.T. Pune @ Pune.”

- ii) If the amount is deposited by the Applicant within a period as stated above, Respondent/Claimant No.1 is entitled to withdraw 50 per cent amount with accrued interest without furnishing any security but subject to out come of the present First Appeal ;
- iii) Registry is directed to invest the balance amount in fixed deposit of Nationalized Bank for initial period of one year and same to be continued till further orders ;
- iv) Liberty granted to Respondent/Claimant No.1, if she desire, to prefer appropriate application for withdrawal of the further amount and that application to be decided on its own merits ;
- v) The Civil Application stand disposed of accordingly ;
- vi) No order as to costs.

(K. K. TATED, J.)