

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
CIVIL APPLICATION NO.120 OF 2019**

in

FIRST APPEAL (ST) NO.19059 of 2018

Reliance General Insurance Co Ltd .. Applicant

vs

Bhavesb Ramesb Raut minor thr

his Father Ramesb Ramcbandra Raut & anr.Respondents

Ms.Poonam Mittal for Applicant.

CORAM : K.K.TATED, J

DATE : 25th MARCH, 2019

P.C

Heard learned counsel for the applicant.

2. Advocate for the applicant submits that the applicant is seeking stay of the operation and implementation of the impugned judgment and award dated 31.3.2016 passed by the M.A.C.T. Alibag in Motor Accident Claim Application No.35 of 2010 holding that the respondents/claimants are entitled to the sum of Rs.1,38,000/- with interest at the rate of 9 % p.a. by way of compensation.

3. Learned counsel for the applicant submits that the respondents/Claimants filed Execution Application, in which the Executing Court issued attachment warrant for recovery of Rs.2,21,167/- for compensation. Learned counsel for the applicant submits that entire amount is recovered by the claimants in execution application then great injustice will be caused to them.

She submits that she has a good case on merits in the present proceedings.

4. Learned counsel for the applicant submits that in the interest of justice, this hon'ble Court be pleased to stay the operation and implementation of the Judgment and award dated 31.3.2016 passed by the Tribunal. She submits that if the stay is not granted, irreparable loss and injury will be caused to them. She submits that they have a good chance of success in the present proceedings.

5. Learned counsel for the applicant submits that she has received instructions from her clients that they are ready and willing to deposit the entire awarded amount in the Tribunal within two weeks from today.

6. It is to be noted that in the present proceedings, there is a delay of two years and six days in filing the First Appeal before this Court. In the accident which occurred on 18.10.2009, the claimant sustained injuries. Hence, the claimant had filed an application for compensation under section 166 of the Motor Vehicle Act. The Tribunal after considering the evidence on record held that the claimant is entitled to Rs.1,38,000/- by way of compensation. As there is a delay in filing the First Appeal on the part of the Insurance company, I am of the opinion that the respondent/original claimant

be permitted to withdraw 70% amount without furnishing any security but, subject to the outcome of the First Appeal. Hence, the following order :

O R D E R

(i) The operation and implementation of the impugned Judgment and Award dated 31.3.2016 passed by the Motor Accident Claim Tribunal, Alibag in Motor Accident Claim Application No.35 of 2010 is stayed till the hearing and final disposal of the First Appeal on condition that the applicant-Insurance company to deposit the entire awarded amount in the Tribunal along with interest and costs if any, on or before 10.4.2019 failing which the Civil Application shall stand dismissed without referring back to the Court.

(ii) If the amount is deposited within the stipulated time as stated hereinabove, the respondent/claimant is entitled to withdraw 70% amount without furnishing any security.

(iii) The Tribunal is directed to invest remaining 30% amount in fixed deposit of any nationalized bank initially for a period of one year and same to be continued till further orders.

Civil Application disposed of accordingly.

{K.K.TATED, J}