

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

**CIVIL APPLICATION NO. 2756 OF 2017
IN
FIRST APPEAL STAMP NO. 20182 OF 2017**

National Insurance Company Ltd. Applicant
V/s.

Smt. Asmita Navneet Magdum & Ors. Respondents

.....
Mr. Sanjay Krishnan i/b Harshal M. Rane for the applicant.
None for the Respondents.

CORAM : K.K.TATED, J.
DATED : 9th September, 2019

P.C.

1. Heard learned counsel Mr. Sanjay Krishnan for applicant.
2. By this Civil Application Applicant is seeking stay of the operation and implementation of impugned judgment and award dated 6th February, 2017 passed by the Hon'ble Member Motor Accident Claim Tribunal, Kolhapur in Motor Accident Claim Petition No. 140 of 2014 holding that the respondent/claimants are entitled sum of Rs. 24,98,600/- by way of compensation with interest @ 6 % p.a.
3. The Learned counsel for applicant submit that as per earlier order dated 12th September, 2017 passed by this court they have

already deposited entire awarded amount in the tribunal.
Statement is accepted.

4. The Learned counsel for applicant submit that if entire amount is withdrawn by the respondent/claimant then nothing will survive in the present proceedings. He submit that they have good chance of success in the present matter. He submit that at the time of awarding the compensation in favour of respondent/claimant, tribunal failed to consider the income and negligency of the deceased persons. He submit that pending the hearing and final disposal of first appeal this Hon'ble Court be pleased to stay the operation and implementation of impugned judgment and award. He submit that if stay is not granted, irreparable loss will cause to them.

5. It is to be noted that in the present proceeding the accident which occurred on 1st September, 2014, Claimant no. 1 has lost her husband. Claimant no. 2 is minor and claimant no. 3 and 4 are parents of deceased. At that time the deceased was working as Accounts Manager and was drawing Rs. 9,600/- salary per month. Hence the respondent/ claimant filed application under section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 36,54,000/- with interest.

5. Considering the fact that claimant no. 1 is wife and she has to maintain her minor child as well as to look after in laws, I am of the opinion that claimant can be permitted to withdraw some amount during the pendency of the present First Appeal. In any case, there is delay on the part of applicant to file present First Appeal before this Court.

6. Hence, the following order.

ORDER

a) Civil Application is allowed in terms of prayer clause 'a' which reads thus :

“Pending the hearing and final disposal of the appeal this Hon’ble Court be pleased to stay the operation of the impugned Judgemnt and Award dated 6th February 2017 passed by the Hon’ble Member, MACT, Kolhapur allowing the Claim Petition bearing No. 140 of 2014 and directed this Appellant and the Respondent no. 5 & 6 herein to pay jointly and severally the total amount of Rs. 24,98,600/- (Rupees Twenty Four Lakhs Nienty Eighty Thousand Six Hundred only) inclusive of the No Fault Libaility amount with interest at the rate of 6% p.a. interest from the date of filing the Claim Application till date realisation.”

b) Claimant No. 1 Smt. Asmita Navneet Magdum is permitted to withdraw 20% amount with accrued interest

without furnishing any security but subject to outcome of the First Appeal.

c) Claimant No. 3 Shri Subhash Mahadev Magdum and Claimant No. 4 Sou. Kalyani Subhash Magdum is permitted to withdraw 10% each of total compensation with accrued interest without furnishing any security but subject to outcome of the First Appeal.

d) Tribunal is directed to invest the remaining amount in fixed deposit of any nationalized bank initially for a period of one year and same to be continued till further order.

e) Liberty is granted to the respondent/claimant if they so desires to prefer an application for withdrawal of the further amount and that will be decided on its own merits.

f) Civil Application is disposed of accordingly.

g) Registry is directed to transfer sum of Rs. 25,000/- with accrued interest deposited by the applicant at the time of filing First Appeal to the Motor Accident Claim Tribunal, Kolhapur in the account of Motor Accident Claim Petition No 140 of 2014.

h) No order as to costs.

(K.K.TATED, J.)