

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

**CIVIL APPLICATION NO. 3360 OF 2019
IN
FIRST APPEAL (ST.) NO. 19156 OF 2019**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Nisha Gandhi i/b Res Juris for the Applicant.

**CORAM: K.K.TATED, J.
DATED : OCTOBER 15, 2019**

P.C.

1 Heard.

2 By this Civil Application, Applicant is seeking Stay of the Operation and implementation of the Judgment and award dated 30/10/2018 passed by the MACT, Nashik in Claim Application No. 143/2015 holding that the Respondents/Original Claimants are entitled a sum of Rs. 2,18,000/- by way of compensation with interest @ 9% p.a. from the date of filing the petition till realization of the amount.

3. The Tribunal further directed the Insurance Company to pay the compensation to the Claimants first and then recover from the owner of the offending vehicle.

4. The Learned Counsel for the Applicant submits that, in the present proceeding, the offending vehicle was not duly insured with the Applicant. She submits that, the cheque issued towards the insurance premium was and dishonored. These facts were communicated by the Applicant to the owner of the vehicle as well as RTO inspite of that, the Tribunal directed the Insurance Company to pay the compensation to the Claimants first and then recover from the owner of the offending vehicle.

5. The Learned Counsel for the Applicant submits that, if entire amount is recovered by the Respondents/Claimants by filing execution application, then nothing will survive in the present proceeding. She 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. She submits that if stay is not granted irreparable loss will cause to them.

6. In the present proceeding, in the accident which occurred on 13/09/2014, the Respondents/Claimants lost her father

namely Bhila Sonu Khairnar who was 65 years old and was doing agriculture and was earning 60,000/- per annum. Hence, the Respondents/Original Claimants filed Application under Section 166 of the Motor Vehicles Act for compensation.

7. Considering the fact that the Respondent/Original Claimants lost their father and as there is delay of 119 days to file the First Appeal before this Court, I am of the opinion that the Original Claimants can be permitted to withdraw sum amount without furnishing any security but subject to outcome of the First Appeal. Hence, the following order:

a. Civil Application is allowed in terms of prayer clause (b) on a condition that the Applicant to deposit the entire awarded amount with interest in Tribunal on or before 16/11/2019, failing which, the Civil Application shall stand dismissed without further reference to the Court. Prayer clause (b) reads thus:

“b. Pending the hearing and final disposal of the first appeal the execution, implementation and operation of Judgment and award dated 30.10.2018 passed by the Learned Member, Motor Accident Claims Tribunal, Nashik, in MACP No. 143/2015 may kindly be stayed.”

b. If the amount is deposited within time, the Original Claimants namely **Punjaram Bhila Khairnar, Shivaji Bhila Khairnar and Devaji Bhila Khairnar** are entitled to withdraw 60% amount of compensation with accrued interest equally without furnishing security but subject to outcome of the First Appeal.

c. The Tribunal is directed to invest the balance amount in fixed deposit of any Nationalized bank, initially for a period of one year and same to be continued till further order.

d. Liberty is granted to the Respondents-Claimants, if they so desire, to prefer an appropriate application for withdrawal of amount and that to be decided on its own merits.

e. Civil Application stands disposed of accordingly.

f. No order as to costs.

(K.K.TATED, J.)