

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

CIVIL APPLICATION NO. 3053 OF 2019

IN

FIRST APPEAL NO. 1201 OF 2019

The Divisional Officer
Universal Sompo General Insurance
Company Ltd.

..... Applicant

V/s.

Rebunsia Shabbir Ahmad & Ors.

..... Respondents

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

.....
CORAM : K.K.TATED, J.
DATED : 30th AUGUST, 2019

P.C.

1. Heard learned counsel for the Applicant.
2. Advocate for Applicant submits that, respondents/claimants filed execution application for recovery of entire amount. Hence, there is an urgency in the present matter.
3. The learned counsel for the Applicant submits that, by this Civil Application they are seeking, stay of operation and implementation of impugned Judgment and Award dated 23rd January 2019 passed by Motor Accident Tribunals, Nashik in Motor Accident Claim Petition No. 1114 of 2013 holding that,

respondents/claimants are entitled the compensation of Rs. 4,10,400/- with interest @ 9% per annum.

4. The learned counsel for the Applicant submits that in the present proceeding the Tribunal erred in coming to the conclusion that, the applicant insurance company is liable to pay compensation to the respondent/claimant, though the cheque issued by the owner of the offending vehicle for payment of premium of insurance policy, was dishonored. He submits that therefore, applicant have good chance of success in the present matter.

5. The learned counsel for the Applicant submits that, pending the hearing and final disposal of the present First Appeal, this Hon'ble Court be pleased to stay the operation and implementation of impugned Judgment and award. He submits that if entire amount is recovered by the respondent/claimant, in execution application, then nothing will survive in the present proceeding.

6. The learned counsel for the Applicant submits that he received instructions from his client that, they are ready and willing to deposit entire awarded amount within a period of four weeks from today.

7. It is to be noted that, in the present proceeding in an accident which occurred on 12th March 2013, the respondent lost deceased Shabbir Ahmad Mohammad Hasan Siddiki, who was working as a driver and getting salary to the tune of Rs. 3,000/- per month. Considering these facts respondents/claimants filed an application under Section 166 of Motor Vehicles Act, 1888 for grant of compensation of Rs. 3 Lacs.

8. Tribunal after considering the evidence on record held that the claimant No. 1 and 4 are entitled compensation. The Tribunal rejected the Claim Petition against Claimant No.2 and 3.

9. Considering these facts, I am of the opinion that claimant No.1 and 4 can be permitted to withdraw same amount during the pendency of the present First Appeal. Hence following Order.

ORDER

a) Civil Application is allowed in terms of prayer clause

‘a’ which reads thus :

“That this Hon’ble Court be pleased to stay the execution Judgment and Award dated 23-01-2019 passed in M.A.C.T. Application No. 1114 of 2013 by Learned Member B.L. Jogdand, Member, MACT NASHIK @ NASHIK.”

On conditions that, applicant to deposit the entire awarded amount with interest in Tribunal on or before 27th September 2019 failing which Civil Application shall stands dismissed without referring back to the Court.

b) If amount is deposited within stipulated time as stated herein above, the claimant No.1 Rebunsia Shabbir Ahmad entitled sum of Rupees One Lack with accrued interest without any security and claimant No.4 Afsana Khatun Shabbir Ahmad is entitled to withdraw Rs.75,000/- with accrued interest without any security but subject to outcome of the First Appeal.

c) Tribunal is directed to invest remaining amount in fixed deposit of any Nationalized Bank initially for a period of one year and same to be continued till next date.

d) Civil Application stands disposed of accordingly.

e) No order as to costs.

(K.K.TATED, J.)