

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2819/2019
in
First Appeal No.1114/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr. Vishwanath Patil for the Applicant
Mr. Yogesh Pande for the Respondent

CORAM: K.K.TATED, J.
DATED : AUGUST 21, 2019

P.C.

1 Pursuant to the praecipe filed by the learned counsel for the Applicant, the matter is taken on production board.

2 By this Civil Application the Applicant is seeking stay to the operation and implementation of the judgment and award dated 25.03.2019 passed by the MACT Pune in MACP No.181/2017 holding that the Respondent-Claimants are entitled to sum of Rs.1,63,78,750/- by way of compensation with interest @ 7% p.a. He submits that they have good chance of success in the matter. He submits that while awarding the compensation in favour of the Respondent, the Tribunal

has failed to consider the fact that there was breach of terms and conditions of the insurance policy. He submits that even otherwise the compensation awarded by the Tribunal is on higher side. Therefore, pending the hearing and final disposal of the First Appeal, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award. He submits that if stay is not granted, irreparable loss will be caused to them.

3 The learned counsel for the Applicant submits that he received instructions from their client that they are ready and willing to deposit the entire awarded amount in the Tribunal within four weeks from today. The statement is accepted.

4 On the other hand, the learned counsel for the Respondent-Claimant has vehemently opposed the Civil Application. He submits that in the present proceedings the Applicant Insurance Co. has deposited a cheque of Rs. 1,89,90,263/- dated 10.07.2019 in the Tribunal to satisfy the judgment and award passed by the Tribunal. He

submits that, later-on, without any permission from the court, they stopped the payment of the said cheque. In view of these facts, there is no question of granting any relief in favour of the Applicant.

5 The learned counsel for the Respondent further submits that the tribunal has awarded compensation of Rs.1,63,78,735/- on the basis of the evidence on record. He submits that in fact, their claim before the Tribunal was 1,77,00,000/- with interest. Therefore, there is no question of grant of any relief in favour of the Applicant.

6 In the present proceedings in an accident which occurred on 12.12.2016 the claimant No.1 lost her husband who was 33 years old. On the date of accident he had completed B.Sc. (Computer-Science), M.Sc. (Industrial Mathematics with Computer Applications). He was serving in Teradata India Pvt. Ltd. Magarpatta as a Technical Consultant since July 2010 till his death. He was permanent employee and getting Rs.80,799/- pm salary.

7 On the basis of these facts, the Respondent-Claimant had filed application u/s.166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.1,77,00,000/-.

8 Considering the fact that the claimant No.1 is house wife and claimant No.2 is minor, who is taking education and claimant No.3 is the mother of the deceased and claimant no.4 is sister of the deceased, I am of the opinion that the Applicant can be permitted to withdraw some amount pending the hearing and final disposal of the First Appeal.

9 Hence, following order is passed:

a. The Civil Application is allowed in terms of prayer clause (a) subject to the Applicant depositing the entire awarded amount along with interest and costs in the Tribunal on or before 27.09.2019 failing which the Civil Application shall stand dismissed without further reference to the court. Prayer clause (a) reads thus:

“(a) That, pending the hearing and final disposal of the First Appeal, this Hon’ble Court be pleased to stay the effect, operation and execution of the

judgment and award dated 25.03.2019 passed by the MACT, Pune in MACP No.181/2017.”

b. If the amount is deposited within stipulated time as stated hereinabove, the claimants are entitled to withdraw the following amount, with accrued interest without furnishing any security but subject to outcome of the First Appeal.

Claimant No.1 Smt. Swaleha
Mohammed Farhan Momin - 20%

Claimant No.3 Smt. Sherbani
Mohammed Farhan Momin - 5%

Claimant No.4 Samreen Firdaus
Mohammed Ibrahim Momin - 5%

b. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

c. The Civil Application stands disposed of accordingly.

d. No order as to costs.

(K.K.TATED, J.)