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

**CIVIL APPLICATION NO. 2877 OF 2017
IN
FIRST APPEAL (STAMP) NO. 35752 OF 2016**

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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Mr. Sandeep S. Jinsiwale for the Applicant.
Mr. T. J. Mendon for Respondent Nos.1 to 5.

CORAM : K. K. TATED, J.
DATE : 3rd APRIL, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. By this Civil Application, the Applicant-Insurance Company is seeking stay of the operation and implementation of the Judgment and Award dated 16.07.2016 passed by Motor Accident Claim Tribunal, Mumbai in Claim Application No. 2714 of 2011 holding that the Respondents-Claimants are entitled sum of Rs.17,00,000/- by way of compensation along with interest @ 9% p.a.
3. Learned Counsel Shri Jinsiwale for the Applicant-Insurance Company submits that he received instruction from his client that they are

ready and willing to deposit the entire awarded amount along with interest in the Tribunal within four weeks from today. Statement is accepted. He submits that in the interest of justice this Hon'ble Court be pleased to stay the operation and implementation of the impugned Judgment and Award dated 16.07.2016 passed by the Tribunal. He submits that if the entire amount is withdrawn by the Respondents-Claimants, then nothing will survive in the First Appeal. He submits that they have good chance of success in the First Appeal. He submits that they have raised objection about the valid driving license of the offending vehicle. Hence they have good chance in First Appeal.

4. It is to be noted that, in the present proceeding, in the accident which occurred on 14.12.2011, Applicant No.1 lost her husband. Hence, Claimant filed Claim Petition No. 2714 of 2011 for sum of Rs.50,00,000/-. Considering the evidence on record, the Tribunal has allowed only 17,00,000/- plus interest. Claimant Nos.2 and 3 are son and daughter of the deceased and Claimant Nos.4 and 5 are parents.

5. Considering these facts, Respondents/Claimants can be permitted to withdraw some amount without furnishing any security but subject to outcome of the First Appeal. Hence, following order :

- (i) Civil Application is allowed in terms of prayer Clause (b) on condition that the Applicant-Insurance Company to deposit entire

amount along with interest and costs, if any, in the Tribunal on or before 02.05.2019, failing which the Civil Application shall stand dismissed without referring back to this Court. Prayer Clause (b) reads thus:

“(b) Pending the hearing and final disposal of the present Appeal this Hon'ble Court be pleased to stay the operation, execution, implementation, effect and further proceedings pursuant to the impugned Judgment and Award dated 16th July 2016, passed by the Learned Member, of M.A.C.T., Dist.: Mumbai in M.A.C.P. No. 1714 of 2011.”

(ii) If the amount is deposited within stipulated time as stated above, Claimant No.1-Smt. Jyoti Anil Juvekar is entitled to withdraw 15% amount without furnishing any security and Claimant Nos.2-Somesh Anil Juvekar, Claimant No.3-Samiksha Anil Juvekar, Claimant No.4-Sunanda and Claimant No.5-Mohan V. Juvekar also entitled to withdraw 5% amount of compensation each without furnishing any security but subject to outcome of the First Appeal.

(iii) The Tribunal is directed to invest the amount in a fixed deposit in any Nationalized Bank, initially for a period of one year and the same shall be renewed from time to time till further orders.

(iv) Liberty granted to the Respondents-original Claimants, if they so desire, to prefer an appropriate application for withdrawal

of remaining amount, which will be decided on its own merits.

(v) Sum of Rs.25,000/- deposited by the Insurance Company at the time of filing of First Appeal, in the Registry of this Court, be transferred to the Motor Accident Claim Tribunal in the account of Claim Application No. 2714 of 2011 along with accrued interest, if any.

(vi) The Civil Application is disposed of accordingly.

(vii) No order as to costs.

[K. K. TATED, J.]