

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.431/2019

in

First Appeal No.129/2019

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

Court's or Judge's orders.

Mr. Rahul mehta I/b. KMC Legal Venture for
the Applicant

CORAM : K.K.TATED.J.
DATED : JUNE 24, 2019

P.C.

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

2 The learned counsel for the Applicant that the Respondent has filed Execution Application. He submits that if the entire amount is recovered by the claimants in the Execution Application then nothing will survive in the present proceedings.

3 By this Civil Application, the Applicant is seeking stay to the operation and implementation of the impugned judgment and award dated 18.04.2018 passed by the MACT Raigad in MACP

No.149/2016 holding that the Respondent-Claimants are entitled to sum of Rs.22,69,960/- by way of compensation with interest @ 9% p.a.

4 The learned counsel for the Applicant submits that the Tribunal has erred in coming to the conclusion that the Respondents are entitled to compensation of more than Rs.22 lacs. He submits that the Trial Court has not considered the contributory negligence while deciding the liability of the Applicant. He submits that they have good chance of success in the matter. 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 till hearing and final disposal of the First Appeal.

5 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 undertaking is accepted.

6 It is to be noted that in an accident which occurred on 02.02.2016 the claimant

No.1 lost her husband. On the date of accident, the deceased was of 39 years old and he was serving with India Glass Ltd. and was getting monthly salary of Rs.14602/-. On the basis of these facts, the Respondent-Claimant had filed petition u/s.166 of the Motor Vehicles Act, 1988 for compensation wherein the Tribunal has held that the claimants are entitled to sum of Rs.22,69,960/-.

7 It is to be noted that claimant Nos.2 and 3 are minor. The claimant No.1 is a housewife. Considering these facts, I am of the opinion that the claimant No.1 may be allowed to withdraw some amount for herself and for her minor children.

8 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 26.07.2019, failing which the Civil Application shall stand dismissed without further reference to the court. Prayer clause (a) reads thus:

“(a) That this Hon'ble Court be pleased to stay the effect/execution/operation and implementation of the judgment and award dated

18.04.2018 passed in MACT application No.149/2016 by MACT, Raigad @ Alibag."

b. If the amount is deposited, the claimant No.1 is entitled to withdraw 25% of the amount with accrued interest without furnishing any security, subject to outcome of the First Appeal.

c. 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.

d. Liberty granted to the claimants to prefer an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits

e. The Civil Application stands disposed of accordingly. No order as to costs.

(K.K.TATED, J.)