

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.334/2019
IN
FIRST APPEAL NO.101/2019

Bajaj Allianz General Insurance Co.Ltd. Appellant.

Vs.

Smt.Salamat A. Mujawar & Ors. ... Respondents.

Mr.Sarthak S. Diwan, advocate for appellant.

CORAM : K.K.TATED, J.
DATED : JUNE 27, 2019.

P.C.

Heard learned counsel for applicant.

2. By this civil applicaiton, the applicant/Insurance Company is seeking stay of operation and implementation of judgment and award dated 9.3.2019 passed by Motor Accident Claim Tribunal , Karad in MACP No. 2/2014 holding that respondent/claimants are entitled sum of Rs.4,58,300/- by way of compensation with 7% interest p.a. from the date of filing of petition till realization.

3. Learned counsel for applicant submits that at the time of deciding claim petition filed by respondent, trial court failed to consider the fact that the deceased himself was driving the offending vehicle. He submits that hence, the Insurance Company is not liable to pay the compensation. He submits that even the Tribunal did not consider contributing negligency at the time of fixing compensation.

They have good chance of success in the present proceeding.

4. Learned counsel for applicant submits that pending hearing and final disposal of first appeal, impugned judgment and award be stayed. If respondent recovers the entire compensation by filing execution application then, nothing will survive in first appeal.

5. It is to be noted that in an accident which occurred on 8.7.2013 claimant no.1 lost her husband Arif Yusuf Mujawar. During that period, he was doing a job as a Helper at Tasawade, MIDC and was earning Rs.3300/- per month. The claimant nos. 2 and 3 are parents of the deceased.

6. Considering the fact that claimants filed Claim Petition u/s 166 of the Motor Vehicle Act in 2014, same was decided in 2019 and the reasons given by the Tribunal, I am of the opinion that claimants can be permitted to withdraw some amount without furnishing security subject to outcome of appeal.

7. Hence, the following order.

A) Civil application is allowed in terms of prayer clause (b) which is reproduced as below, on condition that applicant has to deposit the entire awarded amount in the Tribunal with interest on or before 31/07/2019 failing which civil application shall stand dismissed without referring back to the court.

"(b) That pending hearing and final disposal of the present First appeal, the effect, operation, implementation and execution of the impugned judgment and award dated 9.3.2018 passed by the Motor Accident Claim Tribunal at Karad in MACP No.2/2014 and disbursal of amount there under, be kindly stayed."

B) If amount is deposited within stipulated time, in that case, claimant no.1 Smt. Salamat Arif Mujawar is entitled to withdraw Rs. 1,00,000/- with accrued interest. Claimant No.2 Yusuf Gani Mujawar and No.3 Smt. Begam Yusuf Mujawar are entitled to withdraw Rs.50,000/- each with accrued interest without furnishing any security but subject to outcome of first appeal.

C) Tribunal is directed to invest remaining amount in fixed deposit in any Nationalized bank, initially for a period of one year and thereafter same be continued till further orders.

D) Liberty granted to respondents/claimants if they so desire to prefer appropriate application for withdrawal of further amount and that application will be decided on its own merits.

E) Civil application is disposed of.

F) No order as to cost.

(K.K.TATED, J.)

