

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Application No.3074/2019

in

First Appeal (ST) No.22645/2019

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

Court's or Judge's orders.

Ms. Poonam Mittal for the Applicant

CORAM: K.K.TATED, J.
DATED : SEPTEMBER 4, 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 07.01.2019 passed by the MACT, Mumbai in application No.1456/2011 holding that the Respondent-Claimants are entitled to sum of Rs.3,43,139/- by way of compensation with interest @ 8% p.a. from the date of application till its relisation.

3 The learned counsel for the Applicant submits that the deceased was travelling in the goods vehicle, therefore,

the Insurance Co. is not liable to pay compensation. She submits that these facts are not considered by the Tribunal while passing the impugned order. She submits that they have good chance of success in the matter. She submits that if the entire amount is withdrawn by the Respondent-Claimant by filing execution application, then nothing will survive in the present proceedings. She submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the judgment and award passed by the Tribunal during pendency of the First Appeal.

4 The learned counsel for the Applicant submits that she received instructions from their client that, they are ready and willing to deposit the entire awarded amount along with accrued interest, if any, in the Tribunal on or before 27.09.2019. The statement is accepted.

5 It is to be noted that in the present proceedings in an accident which occurred on 13.5.2011 the claimant No.1 lost her husband Devidas who was 45

years old. He was working as a Wireman in Bombay Municipal Corporation and was earning salary of Rs.2,62,560/- p.a. Hence, the claimant had filed claim petition u/s.166 of the Motor Vehicles Act, 1988 and claimed compensation of Rs.25 lacs.

6 The Tribunal after considering the evidence on record, held that the claimants are entitled to sum of Rs.34,31,371/-.

7 Considering the fact that claimant Nos.2 to 5 are taking education and claimant No.1 is widow who has to maintain her children and also there is delay on the part of the Applicant in filing the First Appeal, I am of the opinion that the claimants can be permitted to withdraw some amount during pendency of the First Appeal.

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 25.09.2019, 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 the order passed by the Hon’ble Judge Shri S. B. Hedao in application MACT No.1456/2011 dated 07.01.2019 be stayed.

b. The claimants are entitled to withdraw the following amount with accrued interest without furnishing any security but subject to outcome of the First Appeal.

- a. Deepali Devidas Desai - 15%
- b. Shrutika Devidas Desai - 5%
- c. Shradha Devidas Desai - 5%

c. 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

d. The Civil Application stands disposed of accordingly.

e No order as to costs.

(K.K.TATED, J.)