

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2808 OF 2019
IN
FIRST APPEAL (ST) NO. 21605 OF 2019**

Reliance General Insurance Co. Ltd. Applicant.

Vs.

Babasaheb Mahadev Hande and Anr. Respondents.

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Ms. Kalpana R. Trivedi for the applicant.
Mr. Sameer Mangaonkar for respondent No.1.

.....

**CORAM : K.K.TATED, J.
DATED : AUGUST 19, 2019**

P.C.

Heard Learned Counsel for the parties.

2. By this Civil Application, applicant/Insurance Company is seeking stay of operation and implementation of impugned Judgment and Award dated 24/01/2019 passed by Motor Accident Claims Tribunal, Thane in Motor Accident Claim Petition No. 637 of 2015, holding that the respondents/claimants are entitled to sum of Rs.14,24,694/- by way of compensation with interest at the rate of 8% p.a.

3. The Learned Counsel for the applicant submits that the respondents/claimants filed R.D.No.84 of 2019 for recovery of the entire amount. He submits that executing Court issued notice to the applicant. Hence, there is urgency. He submits that, they have good chances of success in the present matter. He submits that at the time of an accident, the respondents/claimants have not holding the valid licence. He further submits that even respondents/claimants failed to place on record the evidence to show his income. Even otherwise, the compensation awarded by the Tribunal is on higher side. He submits that if the amount recovered by the respondents/claimants in RD No.84 of 2019, then nothing is survived in the present proceedings.

4. The Learned Counsel for the applicant submits that 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 passed by the Tribunal. He submits that his client is ready and willing to deposit entire amount of compensation with interest within four weeks from today. The statement is accepted.

5. On the other hand, the Learned Counsel Mr.Mangaonkar appearing on behalf of the respondents/claimants opposed the Civil Application. He submits that the Tribunal, after considering the disability sustained by the claimants, hold that the claimants are entitled compensation of Rs.14,24,694/- with interest. He further submits that if stay is granted, in that case, the applicant may be directed to deposit entire amount in the Tribunal and allowed the applicant to withdraw the same.

6. I heard the submissions of both the parties.

7. It is to be noted that in the present proceedings, the respondents/claimants filed RD No.84 of 2019 for recovery of the entire amount. In the present proceedings, when the accident occurred on 11/02/2015, the respondents/claimants sustained injury. At that time, he was 48 years old. Because of accident, he was indoor patient from 12/02/2015 to 22/02/2015.

8. As per the contention of the respondent/claimant, he incurred expenses of Rs.15,00,000/- on the medical treatment. At the time of accident, the respondent/claimant was working in Printing Press

at Siddhi Arts and was earning Rs.29,936/- per month. Because of accident, he is suffering the loss. Hence, he has filed an application under Section 166 of Motor Vehicle Act for claiming the compensation.

9. Considering these facts and evidence of Dr.Gunjotikar, who issued discharge card (Exh.35) and its certificate at Exh.30, I am of the opinion that claimants can be permitted to withdraw some amount pending the hearing and final disposal of Appeal. Hence, the following order :-

ORDER

(A) Civil Application No.2808 of 2019 is allowed in terms of prayer clause (a), on condition that the applicant/Insurance Company to deposit the entire awarded amount with interest, cost, if any, in the Tribunal on or before 21/09/2019, failing which, the Civil Application shall stand dismissed without further reference to the Court. Clause (a) reads thus :

“(a) Pending the hearing and final disposal of the first appeal, this Hon'ble Court by an order of stay may kindly stay the Operation, implementation and execution of the judgment and order dated 24/01/2019 passed by Shri. M.M.Walimohammed Jt. Dist.Judge & Addl. Sessions Judge in MACP No.- 637/2015.”

(B) If amount is deposited within stipulated time, the respondent/original claimant Balasaheb Mahadev Hande is entitled to withdraw 40% of the total compensation with accrued interest, but subject to outcome of the First Appeal.

(C) Civil Application stand disposed of accordingly.

(D) No order as to costs.

(K.K.TATED, J.)