

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

**CIVIL APPLICATION NO. 3195 OF 2019
IN
FIRST APPEAL (ST.) NO. 22717 OF 2019.**

Royal Sundaram Alliance Insurance Co. Ltd. Applicant.

Vs.

Chitra Sidharth Malve & Ors. Respondents.

.....
Nikhil Mehta i/b. KMC Legal Venture for the Applicant
.....

**CORAM : K.K.TATED, J.
DATED : SEPTEMBER 24, 2019**

PC.

1 Today the matter is shown on production board pursuant to the praecipe dated 23rd September 2019 filed by the advocate for the Applicant.

2. Heard Learned Counsel for the Applicant.

3. The Learned Counsel for the Applicant submits that the Claimants filed the complaint with Insurance Regulatory and Development Authority stating that the advocate for the Applicant-Insurance Company not moving before the High Court in their matter. Hence, there is urgency. To that effect he has placed on record the copy of e-mail.

4. The Learned Counsel for the Applicant submits that, by this Civil Application, the Applicant is seeking stay of the operation and implementation of

the Judgment and award dated 15/12/2018 passed by the Motor Accident Claims Tribunal, Kalyan in Motor Accident Claim Petition No. 162 of 2013 holding that the Respondents/Original Claimants are entitled compensation of Rs. 83,72,350/- with interest @ 9% p.a.

5. The Learned Counsel for the Applicant submits that, in the present proceeding at the time of calculating the income of the deceased the Trial Court failed to consider the ratio of ***Sarla Varma Vs. Delhi Transport Corporation & Anr. (2009)6 SCC 121*** for deduction held 1/4 instead of 1/3. In support of this contention he relies upon para. 15 of the impugned Judgment. He submits that if the entire amount is recovered by the claimants by filing execution application, then nothing will survive in the matter. He 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. He submits that if application is not allowed, irreparable loss will cause to the Applicant.

6. The Learned Counsel for the Applicant further submits that, he has received instructions from his client that, they are ready and willing to deposit entire awarded amount with interest on or before 18/10/2019. The statement is accepted.

7. It is to be noted that in present proceeding, in accident which occurred on 30th June, 2013 the Respondent/Original Claimant No. 1 lost her husband

Siddharth Malve who was 36 years old. On the date of accident, he was employee in ICICI Bank Ltd., Bandra-Kurla Complex, Bandra (E) and was getting monthly salary of Rs. 52,854/- per month. Hence, the Respondent/Original Claimants filed the application under Section 166 of the Motor Vehicles Act, 1988 claiming the compensation of Rs. 1,00,00,000/- with interest @ 18% p.a. Respondent/Claimant No. 2 was 3 months old, when the application for compensation was filed. Claimant No. 3 is mother of deceased senior citizen. Considering these facts and as there is delay on the part of the Applicant to file the present First Appeal, I am of the opinion that the Respondents/Original Claimants can be permitted to withdraw some amount without furnishing any security. Hence, the following order:

a. Civil Application is allowed in terms of prayer clause (a) on a condition that, the Applicant to deposit the entire awarded amount with interest on or before 18/10/2019, failing which 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 execution of the Judgment and award dated 15/12/2018 passed in M.A.C.T. Application No.162 of 2013 by Ld. Member Shri. A.A. Shaikh, Member, MACT Kalyan@Kalyan”

b. If the amount is deposited within time, the Respondents/Original Claimant No. 1 Chitra Siddharth Malve is permitted to withdraw sum of Rs. 10,00,000/- with accrued interest without furnishing any security.

- c. Claimant No. 3 Sheela D. Malve is entitled to withdraw sum of Rs. 5,00,000/- with accrued interest without furnishing any security.
- d. The Tribunal is directed to invest the remaining amount in a fixed deposit of any Nationalized Bank, initially for a period of one year which shall be renewed from time to time till further orders.
- e. Liberty is granted to the Respondents/Original Claimants if they so desire to prefer an appropriate application for withdrawal of further amount and that will be decided on its own merits.
- f. The sum of Rs. 25,000/- deposited by the Applicant-Insurance Company at the time of filing the First Appeal, to be transferred along with accrued interest to the Motor Accident Claims Tribunal, Kalyan in Motor Accident Claim Petition No. 162 of 2013.
- g. Civil Application stands disposed of accordingly.
- h. No order as to costs.

(K.K.TATED, J.)