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

**CIVIL APPLICATION NO. 506 OF 2018
IN
FIRST APPEAL (STAMP) NO. 25028 OF 2017**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Rahul Mehta I/b KMC Legal Venture for the Applicant.

CORAM : K. K. TATED, J.
DATE : 3rd APRIL, 2019.

P. C. :

1. Heard learned Counsel Shri Mehta for the Applicant.
2. By this Civil Application, the Applicant-Insurance Company is seeking stay of the operation and implementation of the impugned Judgment and Award dated 25.01.2017 passed by Motor Accident Claim Tribunal, Raigad-Alibag in Motor Accident Claim Petition No. 1373 of 2011 holding that the Respondent-Claimant is entitled sum of Rs.41,437/- by way of compensation with interest @ 7.5% p.a.
3. Learned Counsel for the Applicant submits that the trial Court has erred in coming to conclusion that the Applicant is liable to pay compensation. He submits that actually the offending vehicle i.e. Maruti car in which the Claimant was travelling is responsible for the said accident and therefore there is no question of keeping the responsibility on the Applicant. Therefore, the impugned Judgment and Award passed by

the Tribunal is required to be set aside.

4. It is specifically stated in paragraph 7 of the impugned Judgment that the original Opponents are responsible to pay compensation jointly and severally. Not only that this is a money decree, therefore the Applicant has to deposit the entire amount in the Tribunal. At this stage, learned Counsel for the Applicant submits that he received instruction that Insurance Company is ready and willing to deposit the entire awarded amount in the Tribunal within four weeks from today. Statement is accepted.

5. Considering the submission made by the learned Counsel for the Applicant and averments in the Civil Application, I am satisfied that the Applicant has made out the case. The Respondent is entitled to withdraw some amount. It is to be noted that it is specifically stated in paragraph 11 of the impugned Judgment that the Claimant sustained 12% disability. In support of that, Claimant examined Dr. More at Exhibit 31.

6. Considering this fact, following order is passed :

(i) Civil Application is allowed in terms of prayer Clause (a) on condition that the Applicant to deposit the entire awarded amount in the Tribunal on or before 03.05.2019, failing which the Civil Application shall stand dismissed without referring back to this Court. Prayer Clause (a) reads thus:

(a) That this Hon'ble Court may be pleased to stay the effect/implementation of the Judgment and Award dated 25.01.2017 passed in M.A.C.T. Application No.

1373 of 2011 by Shri M. S. Pathan in so far as the present Appellant Insurer is concerned.

- (ii) If the amount is deposited within stipulated time as stated above, the Respondent-Claimant is entitled to withdraw 30% amount without furnishing any security but subject of outcome of the First appeal.
- (iii) The Tribunal is directed to invest the remaining amount in a fixed deposit in any Nationalized Bank, initially for a period of one year and the same shall be renewed from time to time till further orders.
- (iv) Sum of Rs.25,000/- deposited by the Insurance Company at the time of filing of the First Appeal in the Registry of this Court be transferred to the Motor Accident Claim Tribunal, Nashik in the account of Motor Accident Claim Petition No. 1373 of 2011 with accrued interest immediately.
- (v) Liberty granted to the Respondent, if he so desire, to prefer appropriate application for withdrawal of remaining amount which will be decided on its own merits.
- (vi) Civil Application stands disposed of accordingly.

[K. K. TATED, J.]