

Amk

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

**CIVIL APPLICATION NO. 504 OF 2018
IN
FIRST APPEAL (STAMP)NO. 25140 OF 2017**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

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 Judgment and Award dated 01.04.2017 passed by the Motor Accident Claim Tribunal, Mumbai in Application No. 1915 of 2011 holding that the Respondent-Claimant is entitled compensation of Rs.85,000/- along with interest @ 9% p.a.
3. 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. He submits that pending and hearing of First Appeal, operation and implementation of the Judgment and Award be stayed.

4. It is to be noted that in the present proceeding, an accident occurred on 11.05.2011. The Respondent-Claimant sustained injury and because of that she suffered 38% permanent disability. This fact is recorded by the Tribunal in paragraph 14 of the Judgment which reads thus:

“14. So far as the quantum of compensation amount is concerned, in that respect applicant deposed that due to above said accident she sustained some injury and for said injury she was admitted in LTMG Sion Hospital for about 5 days. As per applicant she sustained Fracture of Lt. Proximal tibia, Grade II open, CLW of 5 cm x 3 cm length seen on front of leg and other injuries. As per her contention she was previously doing tailoring work however due to injury unable to perform any work. She also deposed that she sustained 38% permanent disability. On said aspect she also examined medical officer Dr. Mihir. However, in cross-examination of medical officer, it has come on record that he neither treated the applicant nor obtained signature or photograph of applicant on certificate of disability. Even he not kept examination notes. Moreover, considering nature of injury disability certificate appears excessive. Moreover, considering nature of injury contention of applicant regarding permanent occupational disability also not appears acceptable. Even in her police statement applicant stated her occupation as housewife. Hence, contention of applicant regarding business of tailoring also not appears acceptable. Hence, I hold that applicant is not entitled to get any amount under the head permanent disability, however she is entitled to get some amount under the head pain and suffering, loss or amenities of life and other heads.”

5. Considering this fact, I am of the opinion that the Respondent/Claimant is entitled to withdraw the amount without furnishing the amount during the pendency of the First Appeal. Hence, following order :

(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 be pleased to stay the effect, operation, execution and Implementation of the Award dated 01.04.2017 passed in M.A.C.T. Application No. 1915 of 2011 by Shri B. R. Gupta – Learned Member, Hon'ble Motor Accident Claims Tribunal, Mumbai.

(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, Mumbai in the account of Application No. 1915 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.]