

Tikam

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

CIVIL APPLICATION(ST) No. 24261 OF 2018
IN
FIRST APPEAL (ST) No. 24255 OF 2018

Shri E. Shivraj s/o. Ithirajalu	Applicant
Vs.	
Asha Chavan and Ors.	Respondents

Mr. Kalpesh U. Patil for Applicant	-----

CORAM : SHRI K.K. TATED, J.

DATE : APRIL 16, 2019

P.C.:

1. Not on Board. At the request of learned counsel for the Applicant, matter is taken on board
2. Heard the learned counsel Mr. Kalpesh Patil for the Applicant.
3. Learned counsel for Applicant submits that Respondent Nos.1 to 4 are duly served. He submits that Respondent No.5 Insurance Company at Karad Branch refused to accept the service only on the ground that their Branch Office is at Kolhapur. To that effect, he has filed affidavit of service dated 16th April, 2019, which is taken on record.
4. In spite of service, no one appeared for Respondents when the matter was called out.
5. Learned counsel for the Applicant submits that the Respondents/Original Claimant filed application for recovery of the entire amount. He submits that in that execution application, the Executing Court passed order which was stayed on depositing of Rs.2,50,000/-. He submits that now the next date is 18th April, 2019. He submits that if the stay is not granted, the Executing Court may issue attachment/arrest warrant against the Applicant.

6. Learned counsel for the Applicant submits that the Applicant has good chance of success in the present proceedings. He submits that during pending of hearing and final disposal of the First Appeal, be pleased to stay the operation and implementation of the impugned judgment and award dated 27th April, 2016. He submits that if the stay is not granted, irreparable loss would be caused to the Applicant.

7. It is to be noted that in the present proceedings, Claimant No.1 lost her husband Pandurang Chavan in accident which occurred on 27th November, 2012. Claimant Nos. 2 and 3 are daughter and son of deceased Pandurang, who are taking education.

8. Considering the evidence on record, the Tribunal held that the Claimants are entitled for a sum of Rs.13,84,000/-by way of compensation with interest at rate of 8% p.a. Considering the fact that there is a delay of more than 2 years for filing the first appeal, I am of the opinion that the Respondents/Original Claimants can be permitted to withdraw some amount without furnishing security subject to outcome of the First Appeal.

9. Considering the above mentioned facts, following order is passed:

ORDER

- (a) The operation and implementation of the impugned judgment and award dated 27th April, 2016 passed by the Motor Accident Claim Tribunal, Karad in MAC Application No. 53 of 2013 is stayed till the hearing and final disposal of the First Appeal on a condition that the Applicant to deposit the entire awarded amount along with interest and costs in Tribunal on or before 17th May, 2013, failing which civil application shall stand dismissed without further reference to the Court.
- (b) If amount is deposited within stipulated time as stated hereinabove, Claimant No. 1 Smt. Asha Pandurang Chavan is entitled to withdraw a sum of Rs.3,00,000/- with accrued interest

thereon without furnishing any security, but subject to outcome of the First Appeal.

- (c) Claimant Nos. 2 and 3 viz. Sayali Pandurang Chavan and Avinash Pandurang Chavan is entitled to withdraw the amount of Rs.1,50,000/- each with accrued interest thereon, but subject to outcome of the First Appeal.
- (d) The Tribunal is directed to invest the remaining amount in the fixed deposit of any nationalized bank initially, for a period of one year and to be continued till further orders.
- (e) Liberty granted to the Claimants to make appropriate Application for withdrawal of further amount and that Application be decided on its own merits.
- (f) It is made clear that if the amount is not deposited within stipulated time as stated hereinabove, the Respondents/Claimants are entitled to proceed with execution proceedings for recovery of the entire amount
- (g) Civil application stands disposed of accordingly.

[K.K. TATED, J.]