

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.503/2019

in

First Appeal No.141/2019

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.

DATED : JULY 15, 2019

P.C.

1 Pursuant to the praecipe filed by the learned counsel for the Applicant, the matter is taken on production board.

2 By this Civil Application, the Applicant is seeking stay to the operation and implementation of the impugned judgment and award dated 04.05.2018 passed by the MACT Thane in MACP No.76/2015 holding that the Respondent-Claimant is entitled to Rs.20,50,450/- towards compensation with interest @ 8% p.a. from the date of petition till realisation.

3 The learned counsel for the Applicant submits that the Respondent-

Claimant has filed Execution Application and the next date is tomorrow i.e. 16.07.2019. Hence, there is urgency.

4 The learned counsel for the Applicant submits that if the entire amount is recovered by the claimants by filing Execution Application then nothing will survive in the present proceedings.

5 By this appeal they are challenging the judgment and award passed by the Tribunal on two counts i.e. quantum and contributory negligence. He submits that at the time of awarding compensation the Tribunal has failed to consider the fact that the deceased was also responsible for the accident which occurred on 27.07.2014. He submits that considering the Income Tax Returns for the Assessment Years 2012-2013, 2013-2014 and 2014-2015 at Exhibit- Nos. 30 to 32 the Tribunal has awarded the compensation on higher side. He submits that, they have good chance of success in the matter. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the impugned judgment and award. He submits that he received instructions from his client that

they are ready and willing to deposit the entire awarded amount within three weeks from today. The statement is accepted.

5 It is to be noted that in an accident which occurred on 27.07.2010 the Respondent-Claimant lost their son who was 28 years old. He was earning Rs.15,000/- pm. Hence, the Respondent-Claimant had filed application u/s.166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs.8 lacs. The Respondent-Claimant has placed on record I.T>Returns of the deceased for the A.Ys. 2012-2013, 2013-14 and 2014-15 showing income of the deceased was more Rs.1,50,000/- to Rs.1,80,000/- p.a. Considering these facts, the Tribunal held that the Respondent-Claimant is entitled to Rs.20,50,430/-. The Tribunal has specifically recorded in para 4 of the impugned judgment and award that the compensation calculated by the claimants to the tune of Rs.16,86,700/- but they restricted their claim to the tune of Rs.8 lacs.

6 Considering these facts, I am of the opinion that both the claimants can be

permitted to withdraw 25% of the total compensation with accrued interest without furnishing any security but subject to outcome of the First Appeal.

7 Hence, following order is passed:

a. The Civil Application is allowed in terms of prayer clause (a) subject to the Applicant depositing the entire awarded amount along with interest and costs in the Tribunal on or before 09.08.2019 failing which the 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 effect/execution/operation and implementation of the judgment and award dated 04.05.2018 passed in MACT application No.76/2015 by K.D.Vadane, MACT, Thane @ Thane”.

b. The Respondent-Claimant Suleman Daud Shaikh and Farida Suleman Shaikh are entitled to withdraw 25% each of the total compensation with accrued interest without furnishing any security but subject to outcome of the First Appeal.

c. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

d. Liberty granted to the claimants to prefer an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits.

e. The Civil Application stands disposed of accordingly.

f. No order as to costs.

(K.K.TATED, J.)