

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.3959/2017

in

First Appeal No.1332/2017

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. V. V. Parshuramani for the Appellant

CORAM : K.K.TATED,J.

DATED : JUNE 18, 2019

P.C.

1 Heard. By this Civil Application, the Insurance Co. is seeking stay to the operation and implementation of the impugned judgment and award dated 12.04.2017 passed by the MACT Raigad in MACP No.206/2011 holding that the Respondent-Claimants are entitled to sum of Rs.8,70,000/- by way of compensation with 9% pa. interest.

2 The learned counsel for the Applicant submits that the Tribunal has failed to consider the fact that at the time of accident the driver of the offending vehicle was not holding a valid license. He submits that even the Trial Court has awarded compensation on higher side. He submits that at the time of accident the deceased

was of 57 yrs. old but in fact the Trial Court has considered the age as 50 years and applied wrong multiplier. He submits that they have good chance of success in the matter. He submits that if the amount is recovered by the claimant in the Execution Application nothing will survive in the present proceedings. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award till hearing and final disposal of the First Appeal.

3 The learned counsel for the Applicant submits that the Applicant undertakes to deposit the entire awarded amount along with interest and costs in the Trial Court within four weeks from today.

4 It is to be noted that in the present proceedings in an accident which occurred on 22.12.2012 the claimant No.1 lost her husband Ganpat Parshuram Bhagat who was doing real estate business and agricultural work and his income was Rs.1,80,000/- to Rs.2,40,000/- p.a. therefore, the claimant had made an application for compensation of Rs.4,00,000/- with interest. The Tribunal,

after considering the evidence on record held that the Respondent-Claimants are entitled to sum of Rs.8,70,00/- by way of compensation with interest @ 9% p.a.

5 Considering the fact that the claimant No.1 is widow and Claimant Nos.3 to 6 are children of the deceased and they are taking education, I am of the opinion that the claimants can be permitted to withdraw some amount without furnishing any security, subject to outcome of the First Appeal.

6 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 20.07.2019, failing which the Civil Application shall stand dismissed without further reference to the court. Prayer clause (a) reads thus:

“(a) Durign the pendency and final disposal of the accompanying First Appeal, the operation, implementation and execution of the order dated 12.04.2017 passed by the learned Judge, MACT, Alibaug in application No.206/2012 may be stayed.”

b If amount is deposited within stipulated time as stated hereinabove the claimant No.1 Saraswati Ganpat Bhagat is entitled to withdraw sum of Rs.1,50,000/- and claimant Nos.3 to 6 are entitled to withdraw sum of Rs.60,000/- each, with accrued interest, without furnishing any security, subject to outcome of the First Appeal.

c. 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.

(K.K.TATED, J.)