

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.2216/2016**  
**IN**  
**FIRST APPAL (ST)NO.30823/2015**

New India Assurance Co. Ltd. .... Applicant.  
Vs.  
Bahadur N. Yadav & ors. ... Respondents.  
  
Advocate Mr. Sandeep S. Jinsiwale for applicant.

**CORAM : K.K.TATED, J.**  
**DATED : JULY 3, 2019.**

**P.C.**

Heard learned counsel for applicant.

2. By this civil application, applicant/Insurance Company is seeking stay of operation and implementation of judgment and award dated 23.4.2015 passed by MACT, Mumbai in MACP No.2814/2009 holding that respondents/claimants are entitled sum of Rs.8,35,000/- by way of compensation with interest @ 6% pa.

3. Learned counsel for applicant submits that the awarded compensation is on higher side. The Tribunal failed

to consider that, for the multiplier, the age of parents is relevant, when the deceased died as a bachelor. These facts were not considered by the learned trial court at the time of awarding compensation. He submits that they have good chance of success.

4. Learned counsel for applicant submits that in the interest of justice, this court be pleased to stay the operation and implementation of the impugned judgment and award, during the pendency of first appeal. He submits that, if entire amount is recovered by the respondent by filing execution application, then nothing will survive in the present proceeding.

5. It is to be noted that, in an accident which occurred on 23.9.2009 Mukesh Yadav died. He was earning Rs.5000/- pm . Hence, respondent filed claim petition u/s 166 of Motor Vehicle Act claiming sum of Rs.10,00,000/- by way of compensation.

6. Considering these facts, I am of the opinion that respondent can be permitted to withdraw some amount during the pendency of present first appeal. Hence, the following order.

A) Civil application is allowed in terms of prayer clause (b) which is reproduced as below on condition that, applicant to deposit the entire amount with interest in the Tribunal on or before 3.8.2019 failing which civil application shall stand dismissed without referring back to the court.

b) Pending hearing and final disposal of present appeal, this Court be pleased to stay the operation, execution, implementation, effect and further proceedings pursuant to impugned judgment and award dated 23.4.2015, passed by the learned Member, of MACT, Mumbai in MACP no.2814/2009.

B) If the entire amount is deposited within stipulated time, Claimant No.1 Mr.Bahadur Nanhku Yadav is permitted to withdraw 10% amount with interest, Claimant no. 2 Champa Bahadur Yadav is permitted to withdraw 10% amount with interest and Claimant no.3 Rakesh Bahadur Yadav is entitled to withdraw 5% amount with accrued interest, without furnishing any security but subject to outcome of first appeal.

C) Tribunal is directed to invest remaining amount in a Fixed Deposit in any Nationalized bank, initially for a period of one year and thereafter same be continued till further orders.

D) Liberty granted to respondents/claimants if they so desire to prefer appropriate application for withdrawal of further amount and that application will be decided on its own merits.

E) Civil application is disposed of.

F) No order as to cost.

**(K.K.TATED, J.)**

