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

**CIVIL APPLICATION NO. 1226 OF 2019
IN
FIRST APPEAL (STAMP) NO. 34359 OF 2018**

Cholamandalam M. S. General Insurance Co. Ltd. .. Applicant
Vs.
Smt. Poonam Gupta & Ors. .. Respondents

Ms. Deepika Prabhala I/b Res Juris for the Applicant.

CORAM : K. K. TATED, J.
DATE : 28th MARCH, 2019.

P. C. :

1. At the request of learned Counsel for the Applicant, matter is taken on production board.
2. Heard learned Counsel for the Applicant.
3. By this Civil Application, the Applicant-Insurance Company is seeking stay of the operation and implementation of the Judgment and Award dated 19.04.2018 passed by Motor Accident Claim Tribunal, Pune in Motor Accident Claim Petition No. 129 of 2015 holding that the Respondents-Claimants are entitled for compensation of Rs.50,60,000/- with interest @ 7.5% p.a.
4. Learned Counsel for the Applicant submits that the Respondent-Claimants filed execution application for recovery of entire amount. She submits that, if the entire amount is recovered by Respondents-Claimants in execution application, then nothing will survive in the present

proceeding. Learned Counsel for the Insurance Company submits that she received instructions from her client that they are ready and willing to deposit the entire amount. Statement is accepted.

5. In the present proceeding, original Claimant lost her husband in an accident which occurred on 16.01.2014. The deceased was doing business. Even his income was higher side. Para 29 of the impugned Judgment shows that annual income of the deceased in the year 2012-13 was Rs.14,20,268/-, gross income from business in the year 2013-14 was Rs.12,52,669/- and for the year 2014-15 gross total income was of Rs.12,31,789/-. On the basis of this fact, the Tribunal awarded compensation of Rs.50,60,000/-. Apart from that, there is delay on the part of the Insurance Company to deposit the said amount and filing of the First Appeal itself. In the meanwhile, the Respondent-Claimant filed execution application for recovery of entire amount.

6. Considering this fact I am of the opinion that the Respondent-Claimant can withdraw some amount without furnishing any security.

7. Hence, the following order:

(A) Civil Application is allowed in terms of prayer clause (b) on condition that the Applicant-Insurance Company to deposit entire awarded amount with interest on or before 30.04.2019, failing which, the Civil Application shall stand dismissed without referring back to this Court. Prayer Clause (b) reads thus:

“(b) Pending hearing and final disposal of the first

appeal the execution, implementation and operation of judgment and award dated 19.04.2018 passed by the Learned Member, Motor Accident Claims Tribunal, Pune in MACP No. 129 of 2015 may kindly be stayed.”

(B) If the amount is deposited within stipulated time, as stated above, the Claimant-Smt. Poonam Gupta is entitled to withdraw 20% amount without furnishing any security, Claimant-Shree Prasad Shah is entitled to 5% amount without furnishing any security and Claimant-Saroj Gupta is entitled to withdraw 5% amount without furnishing any security.

(C) The Tribunal is directed to invest 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.

(D) Liberty granted to the Respondents-original Claimants, if they so desire, to prefer an appropriate application for withdrawal of remaining amount, which will be decided on its own merits.

(E) The Civil Application is disposed of accordingly.

[K. K. TATED, J.]