

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

Interim Application No.1/2019
in
First Appeal No.949/2019

**Basavraj
G. Patil**

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Smt. Asha Baburao Mangate & Anr. Applicants

Bajaj Allianz General Insurance
Co. Ltd. Appellant

Vs.

Smt. Asha Baburao Mangate & Anr. Respondents

Mr. Ajinkya J. Jaibhave for the Applicants
Mr. Devendranath S. Joshi for the Respondent - Appellant

CORAM: K.K.TATED,J.

**DATED : DECEMBER 18, 2019
(In Chamber at 2.45)**

P.C.

Heard. By this application, the Applicants - claimants are seeking modification of the order dated 23.07.2019 passed by this court in Civil Application No.2466/2019.

2 The learned counsel for the Applicant submits that by order dated 23.07.2019, this court had directed the claimants to withdraw sum of Rs.42,46,566/- with accrued interest by furnishing bank guarantee of any Nationalized Bank on or before 19.10.2019. He submits that for

furnishing the bank guarantee of a Nationalised Bank, they have to deposit the entire amount in the Bank. Hence, it is not possible for the Applicant to furnish the bank guarantee. He submits that the Applicants are ready and willing to furnish solvent security to the satisfaction of the Tribunal for withdrawal of the amount. He undertakes that the Applicant shall continue the solvent security till disposal of the First Appeal.

3 The learned counsel for the Applicant submits that though the Applicant had made a statement before this court and which is recorded in para 5 of the order dated 23.07.2019 that the Respondent is ready and willing to provide the bank guarantee, at that time, he had no knowledge about the procedure prescribed for providing the bank guarantee.

4 Considering the submissions made by the learned counsel for the Applicant and the averments made in the Civil Application, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

5 Hence, following order is passed:

a. Clause (b) of the order dated 23.07.2019 be substituted with the following:

“(b) If the amount is deposited within stipulated time as stated hereinabove, Respondent No.1 Asha Baburao Mangate is entitled to withdraw sum of Rs.42,46,566/- with accrued interest by furnishing solvent security to the satisfaction of the Trial Court,

on or before 30.01.2020, which shall be continued till hearing and final disposal of the First Appeal.”

- b. Rest of the order shall remain as it is.
- c. Interim Application stands disposed of accordingly.
- d. Corrected order dated 23.07.2019 reads thus:

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

**CIVIL APPLICATION NO. 2466 OF 2019
IN
FIRST APPEAL NO. 949 OF 2019**

Bajaj Allianz General Insurance Co. Ltd. Applicant.

Vs.

Asha Baburao Mangate & Ors. Respondents.

.....

Mr. D. S. Joshi for the Applicant.

Mr. Saurabh Raut i/b Ajinkya Jaibhave for Respondent Nos. 1 and 2.

.....

**CORAM : K.K.TATED, J.
DATED : JULY 23, 2019**

P.C.

1 Heard Learned Counsel for the parties.

2. By this Civil Application, the Applicant Insurance Company is seeking stay of the operation and implementation of the Judgment and award dated 9th October, 2018 passed by the

Motor Accident Claims Tribunal, Nashik in Motor Accident Claim Petition No. 588 of 2011 holding that the Respondents/Original Claimants are entitled to sum of Rs. 62,46,566 by way of compensation with interest @ 6% p.a.

3. The Learned Counsel for the Applicant submits that, at the time of passing the impugned Judgment and award, the Tribunal failed to consider income of the deceased. He further submits that, the Trial Court erred in coming to the conclusion that, at the time of accident the deceased was getting Rs. 45,000/- per month salary. He further submits that, in any case, the compensation awarded by the Tribunal is on higher side. Hence, they have good chances of success in the present proceeding. He submits that pending the hearing and final disposal of the First Appeal, the operation and implementation of the impugned Judgment and award be stayed. He submits that if the entire amount is recovered by the Respondents/Original Claimants by filing execution application, then nothing will survive in the present proceeding. He submits that, he has received instructions from his client that, they are ready and willing to deposit the entire awarded amount in the Tribunal within four weeks from today.

4. On the other hand, the Learned Counsel for the Respondents/Original Claimants vehemently opposed the present Civil Application. He submits that in the Accident which occurred on 11th May, 2011, Respondent/Original Claimant No. 1 lost her husband Baburao Mangate who was 53 years old. He submits that considering the income of the deceased, Respondent/Original Claimant No. 1 has filed Application under Section 166 of the Motor Vehicle Act, 1988 claiming the compensation of Rs. 2 crores from the Applicant. The Trial Court considering the evidence on record held that the Claimants are entitled to sum of Rs. 42,46,566 with 6% interest.

5. The Learned Counsel for the Respondents submits that, he has received instructions from his client that they are ready to withdraw the awarded compensation by giving bank guarantee. To that effect he has given in writing. The same is taken on record and marked as 'X' for identification.

6. It is to be noted that, the Claimant No. 2 the son of the deceased is minor, therefore, there is no question of allowing him to withdraw any amount during the pendency of the present proceeding. The Tribunal by its impugned order dated 9th

October, 2018, permitted the Respondent/Original Claimant No. 1 to withdraw the sum of Rs. 42,46, 566/- with interest @ 6% p.a. As the advocate for Respondent No. 1 and 2 given in writing that, they are ready and willing to withdraw the amount by furnishing bank guarantee, I am satisfied that the Respondents have made out case for withdrawal of the some amount. Hence, the following order:

a. The Civil Application is allowed in terms of prayer clause (a), on a condition that, the Applicant Insurance Company to deposit the entire awarded amount in Tribunal on or before 31st August, 2019, failing which Civil Application shall stand dismissed without further reference to the Court. Prayer clause (a) reads thus:

“a. Pending the hearing and final disposal of the appeal, this Hon'ble Court, by an order of stay, may kindly stay the operation, implementation and execution of the part of the impugned Judgment and Award dated 09/10/2018 passed by the Motor Accident Claims Tribunal Nashik in M.A.C.P. No. 588 of 2011.”

(b) If the amount is deposited within stipulated time as stated hereinabove, Respondent No.1 Asha Baburao Mangate is entitled to withdraw sum of Rs.42,46,566/- with accrued interest by furnishing solvent security to the

satisfaction of the Trial Court, on or before 30.01.2020, which shall be continued till hearing and final disposal of the First Appeal.

c. If the Respondents/Original Claimants failed to provide bank guarantee within the stipulated time as stated hereinabove, the Tribunal is directed to invest the remaining amount in a fixed deposit of any Nationalized Bank, initially for a period of one year which shall be renewed from time to time till further orders.

d. The Registry is directed to transfer the sum of Rs. 25,000/- deposited by the Applicant at the time of filing the First Appeal to the Motor Accident Claims Tribunal, Nashik in the account of Motor Accident Claim Petition No. 588 of 2011 with accrued interest.

e. The Civil Application stands disposed of accordingly.

f. No order as to costs.

(K.K.TATED, J.)