

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Interim Application No.1/2019
in
First Appeal (ST) No.25605/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Ms. Pooja Singh a/w. Deepika Prabhal I/b. Res Juris for the Applicant	

CORAM: K.K.TATED, J.
DATED : SEPTEMBER 19, 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 judgment and award dated 30.04.2019 passed by the MACT Baramati in MACP No.157/2015 holding that the Respondent-Claimants are entitled to sum of Rs.9,36,000/- by way of compensation with interest @ 8% p.a.

3 The learned counsel for the Applicant submits that the Applicant has filed Execution Application for recovery

of the amount. The next date is 01.10.2019. She submits that if the entire amount is recovered by the Respondent-Claimant in execution application, then nothing will survive in the present proceedings.

4 The learned counsel for the Applicant submits that at the time of awarding the compensation, the Tribunal has failed to consider the contributory negligence on the part of the deceased. She submits that there was delay on the part of the Respondent claimant in filing the FIR about the accident. She submits that the FIR was filed by the brother of the claimant and not eye witness. She submits that they have good chance of success in the matter . She submits that pending the hearing and final disposal of the First Appeal , this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award. She submits that if stay is not granted irreparable loss will be caused to them.

5 The learned counsel for the Applicant submits that she received instructions from her client that they

are ready and willing to deposit the entire awarded amount along with accrued interest, if any, in the Tribunal within four weeks from today. The statement is accepted.

6 It is to be noted that in the present proceedings in an accident which occurred on 24.05.2015 Jyotiram Subhash Gandhale, husband of claimant No.1 died in the motor accident. At that time he was 36 years old and was doing agricultural work and milk business and was getting Rs.15000/- pm. It is to be noted that claimant No.1 is house -wife and claimant Nos.2 and 3 were minor on the date of filing the claim petition. Claimant No.6 is mother of the deceased.

7 Considering these facts, I am of the opinion that the claimants can be permitted to withdraw some amount during pendency of the First Appeal.

8 Hence, following order is passed:

a. The Civil Application is allowed in terms of prayer clause (b) subject to the Applicant depositing the entire awarded amount along with interest and costs in the Tribunal on or before 19.10.2019,

failing which the Civil Application shall stand dismissed without further reference to the 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 30.04.2019 passed by the Learned Member, MACT at Pune in MACP No.157/2015 may kindly be stayed.”

b If amount is deposited within stipulated time as stated hereinabove the claimant Nos.1 and 6 are entitled to withdraw the following amount with accrued interest without furnishing any security but subject to outcome of the First Appeal.

Claimant No.1 Shobha Jyotiram Gandhale – Rs. 3,50,000/-

Claimant No.6 Smt. Shantabai Subhash Gandhale – Rs.1,00,000/-

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.)