

Santosh

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

**INTERIM APPLICATION NO. 1115 OF 2021
IN
FIRST APPEAL NO. 1212 OF 2019**

Ilaben Vasantbhai Patel ...Appellant

Versus

Shakaruben wd/o Kalubhai Sukharbhai &
ors. ...Respondents

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2021.10.30
19:00:11 +0530

Mr. Jeetendra Ranawat, i/b Sudhakar G. Lakhani, for the
Appellant.

Mr. Sanskar Marathe, for Respondent nos.1 to 4.

Mr. Amol Gatane, for Respondent no.5.

CORAM: N. J. JAMADAR, J.

DATED : 29th OCTOBER, 2021

PC:-

1. Heard Mr. Ranawat, the learned Counsel for the appellant and Mr. Marathe, the learned Counsel for respondent nos.1 to 4 – original claimants.

2. The learned Counsel for the applicant – appellant would urge that the learned Chairman, MACT, Dadra and Nagar Haveli at Silvassa, committed an error in exonerating respondent no.3 – insurer from the liability, though the contract of insurance was valid and in operation on the date of the accident. The learned Counsel further submitted that the exoneration of respondent no.3 – insurer on the ground that there was no valid

fitness certificate and permit is also untenable. The unjustified exoneration of respondent no.3 has caused grave prejudice to the appellant as execution proceedings are initiated against the appellant.

3. In opposition to this, the learned Counsel for the original claimants would urge that the original claimants cannot be left in the lurch. In any event, the liability of the appellant - original opponent would be joint and several. Thus, if the Court stays the execution of the Award, the appellant be directed to deposit the amount of compensation in terms of the impugned Award.

4. Arguable questions are raised by the appellant. In particular, the question as to whether respondent no.3 ought to have been exonerated from the liability to satisfy the award, warrants consideration. The decision of the Tribunal not to resort to the principle of, pay and recover, also warrants consideration.

5. In view of the above, the application deserves to be allowed subject to certain conditions. Hence, the following order:

: O r d e r :

- (i) The application stands allowed.
- (ii) The execution, operation and implementation of the impugned Award in MACP No.18 of 2015, dated 7th October, 2016, passed by the learned Member, MACT,

Dadra and Nagar Haveli at Silvassa, stands stayed till the disposal of the appeal, subject to deposit of the 50% of the amount of compensation alongwith interest accrued thereon within a period of six weeks from today.

- (iii) In the event of default in depositing of the aforesaid amount, the stay shall stand vacated without further reference to the Court.
- (iv) In the event, the appellant deposits the amount, the Tribunal is requested to permit respondent nos.1 to 4 – original claimants to withdraw the 50% of the amount deposited by the appellant, upon furnishing an undertaking before the Tribunal to bring back the said amount alongwith interest at such rate as may be decided by the Court, in the event the appeal is allowed and it is held that the applicants are not entitled to compensation.

[N. J. JAMADAR, J.]