

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 4108 OF 2015
(for stay)

IN
FIRST APPEAL (ST) No. 31396 OF 2014

The New India Assurance Co. Ltd. ...Applicant/
Appellant

Vs.

Mrs. Savita Navnath Sanap and Ors. ...Respondents

Ms. Pooja Yadav i/b. D.R. Mahadik for Applicant-Appellant
Mr. Avanti Inamdar i/b. Rameshwar Gite for Respondents

CORAM : MADHAV J. JAMDAR, JJ.

DATE : SEPTEMBER 18, 2021

P.C. :

1. Heard Ms.Pooja Yadav instructed by Mr.D.R. Mahadik, learned Advocate for the Applicant and Ms. Avanti Inamdar instructed by Mr.Rameshwar Gite, learned Advocate for Respondents.

2. The Applicant- Original Opponent No.1 – New India Assurance Company Ltd. has taken out this civil application for stay of the execution of judgment and award dated 4th April, 2014 passed by the Learned Member, Motor Accident Claims Tribunal, Nashik in M.A.C.P No. 279 of 2010.

3. The Learned Member, Motor Accident Claims Tribunal, Nashik by impugned Judgment and Award allowed the Motor

Accident Claim Petition No.279 of 2010 by passing following operative order:

“O R D E R

[1] The petitioners are entitled to get compensation amount of Rs.25,74,700 (Rs.Twenty Five Lac, Seventy Four Thousands and Seven Hundred only) exclusive of the amount under “No Fault Liability”.

[2] Opponent Nos. 1 to 3 do pay Rs.25,74,700 (Rs. Twenty Five Lacs, Seventy Four Thousands and Seven Hundred only) to the petitioners, jointly or severally with interest @Rs.9% per annum from the date of petition i.e. from 26/03/2010 till payment of the entire amount into the Court.

[3] Opponent Nos.1 to 3 do pay proportionate costs of the petition on Rs.25,74,700 (Rs. Twenty Five Lacs, Seventy Four Thousands and Seven Hundred only) to the petitioners and shall bear their own.

[4] On payment of the above mentioned amount in the Court, the same be apportioned amongst the petitioners as under:-

*Petitioner No.1 :Rs.10,24,700/- + future interest
+ proportionate costs.*

*Petitioner No2: Rs.4,50,000/- + future interest
+ proportionate costs.*

*Petitioner No.3: Rs.4,50,000/- + future interest
+ proportionate costs.*

*Petitioner No.4: Rs.4,50,000/- + future interest
+ proportionate costs.*

*Petitioner No.5:Rs.1,50,000/- + future interest
+ proportionate costs.*

[5] Out of the amount payable to petitioner No1, amount of Rs.7,00,000/- be invested in the fixed deposit in her name for the period of five years in any nationalized bank of her choice. The petitioner No.1 is at liberty to withdraw quarterly interest accrued on her fixed deposit amount, if she desires so. The remaining amount be paid to her by account payee cheque.

[6] The amount payable to the minor petitioner Nos.2 to 4 be invested in the fixed deposit in their respective names, in any nationalized bank of the choice of petitioner No.1, till they attain the age of majority.

[7] The amount payable to the petitioner No.5 be paid to her by issuing account payee cheque.

[8] The petitioners are directed to pay additional Court Fee on Rs.5,74,700/- immediately.

Final Award be drawn up accordingly.

Pronounced in open Court.”

4. This Court by order dated 13th July, 2016 passed in above Civil Application granted ad-interim relief in terms of prayer clause (a) on the condition that the Applicant deposits the entire decretal amount in the Trial Court before the returnable date. Ms. Pooja Yadav, learned Advocate appearing for the Applicant states that the entire decretal amount is deposited before the Motor Accident Claims Tribunal, Nashik.

5. The M.A.C.P. No.279 of 2010 was filed on 26th March, 2010 and at that time, Respondent No.2 was 10 years' old, Respondent No.3 was 8 years' old and Respondent No.4 was 6 years' old. It appears that Respondent Nos.2 and 3 are now major. It is required to be noted that the Learned Member, Motor Accident Claims Tribunal, Nashik has recorded the finding that the accident took place solely on account of negligent and rash driving of the Toyota Qualis by its driver i.e. Opponent No.1 and on the basis of the evidence, passed the operative order as set out hereinabove.

6. Therefore, in the facts and circumstances of this case, the Respondents are allowed to withdraw 50% amount as awarded by the Learned Member, Motor Accident Claims Tribunal, Nashik along with proportionate accrued interest thereon. The said amount be paid after ascertaining that Respondent Nos.2 and 3 have attained majority. The said amount be paid to Respondents in terms of the order dated 4th April, 2014 passed by the Learned Member, Motor Accident Claims Tribunal, Nashik in M.A.C.T. Application No. 279 of 2010. If any of the Respondents are minor, then, the amount payable to such minor be invested in the fixed deposit in their respective name in any Nationalized Bank of the choice of Respondent No.1 till the minor attains the age of majority and 50% amount be paid to the said Respondents after attaining the majority. The Respondents to file an undertaking in this Court to the effect that if the Appellant succeeds in this First Appeal, then they will deposit in this Court the amount received by them along with interest as per the further orders of this Court. It is clarified that the respective respondents are allowed to withdraw the 50% amount as directed by this Court only after

such undertaking is filed in this Court.

7. The Respondents are granted liberty to file application for withdrawal of balance amount.

8. As the Applicants have deposited entire decretal amount the execution of the judgment and award dated 4th April, 2014 passed by the Learned Member, Motor Accident Claims Tribunal, Nashik in M.A.C.P. No. 279 of 2010 shall remain stayed till disposal of the above First Appeal.

9. Civil Application is disposed of in above terms. No order as to costs.

(MADHAV J. JAMDAR, J.)

VA Tikam