

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.7132 OF 2023
IN FA/875/2023

National Insurance Company Ltd.,
Registered Head Office – 3,
Middleton street PB No.9229, Kolkata
having its Divisional Office at
Station Road, Aurangabad
Through its authorized signatory.

.. Applicant

Versus

1. Kavita @ Urmila Dilipkumar Shelge
Age: 47 years, Occu.: Household,
R/o. New Mantri Nagar, Vitthal
Colony, Ring Road, Latur.
2. Digvijay Dilipkumar Shelge
Age: 26 years, Occu.: Education,
R/o. As above.
3. Pranav Dilipkumar Shelge,
Age: 22 years, Occu.: Education,
R/o. As above.
4. Ramakant Kashinath Shitole
Age: 41 years, Occu.: Driver,
R/o Veer Hanumantwadi,
Old Kava Road, Latur,
Tq. and Dist. Latur.
5. Surendra Dhanaji Ghodajkar
Age: Major, Occu.: Business,
R/o. LPG Gas dealer,
Yogeshwari Indane, Chavan Building,
Behind Ratnadeep Theatre
Old Kava road, Latur,
Tq. and Dist. Latur.

.. Respondents

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Mr. A. B. Kadethankar, Advocate for applicant.

Mr. H. V. Patil, Advocate for respondent Nos.1 to 3.

Mr. D. B. Bhange Advocate for respondent No.5

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 8th November, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present application has been filed by the insurance company for stay to the execution of impugned judgment and award dated 30.09.2022.

2. The insurance company wants to challenge the judgment and award dated 30.09.2022 passed in Motor Accident Claim Petition No.183 of 2016 by learned Member, Motor Accident Claims Tribunal, Latur, wherein the following award has been passed :-

“1) The Claim petition is partly allowed with proportionate costs.

2) The respondent Nos.1 to 3 are hereby directed to pay, jointly and severally, compensation amount of Rs.1,86,10,988/- (Rs. One Crore Eighty Six Lacs Ten Thousands Nine Hundred Eighty Eight only) to the petitioners, with interest at the rate of 7% p.a. from the date of institution of petition i.e. 11.08.2016, till realization of the entire amount.

3) The respondent Nos.1 to 3 are directed to deposit the amount of compensation in the following account under intimation to this Court :-

1	Type of Account	Saving Account
2	Account No.	40777681930
3	Account Name	District Judge and Ex-Officio Member of MACT, Latur
4	IFSC Code	SBIN0021055
5	MICR Code	413002058
6	Bank Name and Branch	State Bank of India, Branch Collectorate Complex, Latur

4) The compensation amount be paid to the petitioners equally.

5) Now petitioner Nos.2 and 3 are major. Out of the compensation amount, an amount of Rs.20,00,000/- each be kept in fixed deposit in the name of petitioner Nos.1 to 3 in any Nationalized bank for the period of five years. The petitioners are entitled to take quarterly interest on the fixed deposit, if desired. Balance Amount with interest accrued thereon, be given to petitioners by transfer in their bank account through NEFT or by account payee cheque drawn in their name.

6) The Award be drawn accordingly”

3. It has been submitted on behalf of the insurance company that the driver of the vehicle, though insured with the appellant, was not possessing

requisite license. The vehicle which was driven was transporting hazardous substance and, therefore, the requisite licence was necessary. The insurance company has examined the R.T.O. to prove that the driver was not holding requisite licence. Under the said circumstance, there is every success in the present appeal to the appellant. Even the order regarding pay and recover has not been passed by the learned Tribunal. It has been held that the evidence does not show that at the relevant time the vehicle was transporting hazardous substance and, therefore, the impugned judgment and award is required to be stayed. The execution petition has been already filed. The insurance company is ready to deposit the amount in this Court.

4. Learned Advocate for the original claimants has objected on the ground that the claimants should not be put to harassment.

5. At the outset, we would like to say that there cannot be a blanket stay to a money decree. Further, the point that is tried to be raised is the *inter se* point between the original respondents. Even if it is held that the driver was not holding a requisite licence of a particular category, at the most, it would be an order for pay and recover and, therefore, payment cannot be stopped. The execution petition is already filed and, therefore, the insurance company is at liberty to deposit the amount in the Executing Court and the claimants would withdraw the same. It will affect the merits

of the appeal and, therefore, we do not find any merit in the civil application. Hence, the civil application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm