

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

**INTERIM APPLICATION NO.10248 OF 2024
(for withdrawal)
WITH
FIRST APPEAL STAMP NO. 12392 OF 2024
with
INTERIM APPLICATION NO.8152 OF 2024
(FOR DELAY)
AND
INTERIM APPLICATION NO.8153 OF 2024
(FOR STAY)**

Sugandha Mahendra Salve ... Applicant

In the matter of

Maharashtra State Road Transport Corporation ... Appellant
through Divisional Controller, Nashik

versus

Sugandha Mahendra Salve (Handicap) through. Respondent
Mahendra Shivram Salve

Mr. Pritesh K. Bohade, Advocate for the Applicant/claimant.

Mr. Prathamesh Mandlik i/b. Mr. Nitesh Bhutekar, Advocate for the Appellant.

CORAM : ARUN R. PEDNEKER, J.

DATE : 30th JULY, 2024.

P.C. :

1. Interim Application No.10248 of 2024 is filed by the applicant/claimant for withdrawal of the amount deposited by the appellant-MSRTC before the Tribunal. The claim relates to injury claim, wherein, an amount of Rs.83,57,628/- has been granted as compensation by the Motor Accident Claims Tribunal, Nashik. The claimant has lost both her legs as both her legs are amputated.

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4. The first appeal is filed on the ground on non-joinder of necessary parties. The learned counsel for the appellant-MSRTC submits that the owner and insurer of the tractor are not joined as party. The tractor was parked on the side of the road, it collided with BEST bus and thereafter, the tractor had hit the workers who were working on the divider of the road and cutting trees. The second submission of the learned counsel is that there is contributory negligence on the part of the tractor driver, as such, he should have been a necessary party to the claim petition and the owner of the tractor should have been held responsible for certain percentage of the compensation. The third submission of the learned counsel is that the claimant was working without any safety equipment and if she would have worked with some safety equipment, she could have sustained less injuries. The fourth submission of the learned counsel is that there was no visible caution sign board that the tractor and the employees were working on the site, as such, on account of non-visibility, the accident has occurred and the BEST driver is not fully responsible for the accident.

5. The first two submissions of the learned counsel for the MSRTC, relates to non-joinder of the necessary parties. However, this is a case of composite negligence and the claimant is not required to make party to all the joint tort-feasors as party to the claim petition and can recover the compensation from either of the joint tort feisor. As regards the submission of learned counsel for the insurer, the claimant was not

wearing any safety gear or equipment, he has not shown any rule that the employees were bound to follow certain safety mechanism.

6. Considering submission of learned counsel appearing for the appellant-MSRTC, As of now, I deem it appropriate to permit the applicant to withdraw 60% of the amount deposited by the MSRTC before the Tribunal along with accrued interest thereon till date subject to the undertaking to the satisfaction of the presiding officer of the Tribunal. Interim Application No.10248 of 2024 is accordingly allowed and disposed of. Liberty to apply for further withdrawal if exigency exist.

3. Interim Application No.8152 of 2024 is filed for condonation of delay of 129 days occurred in filing the first appeal. For the reasons stated therein, the delay is condoned. The application is allowed and disposed of. The first appeal be registered.

4. The first appeal is admitted.

5. On admission, Mr. Bohade, learned counsel, waives service of notice on behalf of respondent No.1.

6. The stay to the judgment and order passed by the Tribunal, granted earlier, stands confirmed till the final disposal of the appeal. Interim Application No.8153 of 2024 stands disposed of.

(ARUN R. PEDNEKER, J.)