

**(2011) 12 AHC CK 0313**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Stay Application No. 334142 of 2011 in First Appeal From  
Order No. 2085 of 2011

The New India Assurance Co.  
Ltd.

APPELLANT

Vs

Suresh Kumar and Another

RESPONDENT

**Date of Decision:** Dec. 1, 2011

**Hon'ble Judges:** Sanjay Misra, J

**Bench:** Single Bench

**Final Decision:** Disposed Of

### **Judgement**

Hon"ble Sanjay Misra, J.

Heard Sri Vinay Khare, learned counsel for the appellant-Insurance Company and Sri Akash Mishra, learned counsel for the claimant-respondent.

2. On 28.6.2011, the following interim order was passed by a Division Bench of this Court.

Connect this appeal alongwith First Appeal From Order No. 2084 of 2011.

Admit.

Sri Akash Mishra appears for respondent No. 1.

Issue notice to respondent No. 2.

The respondent-claimants shall be entitled to withdraw half of the amount without security and half of the amount after furnishing security other than cash or bank guarantee.

3. This order was corrected on 08.07.2011. It reads as under:

Civil Misc. Correction Application No. 186863 of 2011.

This is an application praying for correction of the order dated 28th June, 2011.

The last paragraph of the order dated 28th June, 2011 is deleted and substituted by following orders:

The appellant shall deposit the amount as directed by the judgment/award dated 22nd March, 2011 within two months. The respondent-claimant shall be entitled to withdraw half of the amount without security and half of the amount after furnishing security other than cash or bank guarantee. The amount of Rs. 25,000/- deposited in this appeal be remitted to the Court below for adjustment in the amount to be deposited under this order.

Subject to deposit as directed above, the execution of the judgment/award dated 22nd March, 2011 shall remain stayed.

The application is allowed accordingly.

Let a certified copy of this order be furnished to the petitioner today on payment of usual charges.

4. On 29.9.2011, the prayer for modification made by the appellant Insurance Company was disposed of as follows:

Civil Misc. Modification Application No. 186583 of 2011.

This is an application praying for modification of the order dated 28th June, 2011 by which appeal was admitted. While admitting the appeal, following order was passed on 28th June, 2011:

Connect this appeal alongwith First Appeal From Order No. 2084 of 2011.

Admit.

Sri Akash Mishra appears for respondent No. 1.

Issue notice to respondent No. 2.

The respondent-claimants shall be entitled to withdraw half of the amount without security and half of the amount after furnishing security other than cash or bank guarantee.

In the modification now a prayer has been made that execution of the award be stayed. It has been stated by the learned counsel for the appellant that no deposit has been made as directed by our order dated 28th June, 2011, which has been corrected on 8th July, 2011.

In view of the fact that order dated 28th June, 2011, which has been corrected on 8th July, 2011, has not been complied within the period as provided in the order, the interim order has already come to an end. We, however, observe that it is always open for the appellant to make appropriate application for interim relief if it so advised.

The application is disposed of accordingly.

5. Now a further modification application has been made, praying that the recovery proceedings initiated by the Motor Accident Claims Tribunal in Execution Case be stayed for the reason that after passing of the award by the Motor Accident Claims Tribunal it has come to the knowledge of the appellant-Insurance Company that the vehicle in question was insured with another Insurance Company and not with the appellant Insurance Company and therefore, the execution proceeding require to be stayed.

6. Insofar as the above submission made by learned counsel for the appellant is concerned, the same is required to be finally adjudicated in this appeal by a Division Bench and therefore, since no such evidence was produced by the appellant Insurance Company before the Tribunal, it cannot *prima facie*, at this stage be held that the appellant Insurance Company was not liable to pay the compensation to the claimant-respondents. However, in view of the aforesaid subsequent development, the interest of the appellant Insurance Company requires to be protected.

7. For the aforesaid reasons, this stay application requires to be disposed of by providing that in case the appellant deposits the entire awarded amount before the Motor Accident Claims Tribunal (deducting any amount realized by the Executing Court from the appellant) within two months from today, the same shall be kept in an interest bearing account of a Nationalized Bank by the Tribunal until further orders of this Court. In the event the above condition is complied with, the execution proceeding against the appellant Insurance Company shall remain stayed.

8. This application stands finally disposed of as above.