FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.1474/2015
IN
FIRST APPEAL (ST) NO.23088/2014

| Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr. D. D. Bhosale for the Applicant
Mr. Abhijeet A. Joshi for Respondent No.1.
Mr. Kuldeep U. Nikam for Respondent Nos.2 and 3.

**CORAM : K. K. TATED, J.**
**DATE : AUGUST 13, 2015**

**P.C.:**

1. Heard. This Application is preferred by the claimant for withdrawal of the amount deposited by the Appellant Insurance Company pursuant to the order passed by this court in Civil Application No.3147/2014.

2. The learned counsel for the Applicant submits that in an accident which occurred on 03/10/2008, the Applicant lost her husband Dattatray Nimbalkar. On that day he was 43 years old. He was doing centering work and earning Rs.30,000/- pm. The learned counsel for the Applicant submits that because of financial difficulty the Applicant taken hand-loan of

Rs.3,50,000/- from one Mr. Sambhaji Sadashiv Shinde. In support of this contention, the learned counsel for the Applicant relies on receipt dated 20/02/2013 which is on a stamp paper of Rs.100/-. The learned counsel for the Applicant further submits that the Applicant required the said amount for her medical treatment. In support of this contention, the Applicant relies on certificate issued by Dr. Niteen Dhepe (Exhibit-A) page 8 of the Civil Application. He submits that the said Doctor has estimated cost of operation about Rs.80000/-. He submits that the Applicant is a housewife, therefore, it is difficult for her to maintain her day to day expenses. In the interest of justice, this Hon'ble Court be pleased to allow the Applicant to withdraw the amount deposited by the Insurance Company.

3. On the other hand, the learned counsel for the Insurance Company vehemently opposed the Civil Application. He submits that the Tribunal erred in coming to the conclusion that the Appellant Insurance Company is liable to pay compensation. He submits that in view of breach of terms and conditions of insurance policy, they are not liable to pay compensation. He submits that if entire award amount is withdrawn and in case the

Insurance Company succeeds in the appeal, it would be very difficult for them to recover the said amount. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

4. Heard. It is to be noted that in the present proceedings the Applicant lost her husband. On the date of accident the deceased was 43 years old. He was doing centering work and earning Rs.30,000/- pm. In spite of that, the Tribunal held dependency @ Rs.3000/- pm. In view of the documents placed on record i.e. medical certificate Exhibit-A and hand-loan receipt dated 20/02/2013, I am of the opinion that the Applicant is entitled to withdraw some amount without furnishing any security.

5. Hence, following order is passed:

a. The Applicant is permitted to withdraw 50% of the award amount without furnishing any security subject to out come of the appeal.

b. The Applicant is entitled to withdraw further 50% amount by furnishing solvent security to the satisfaction of the Tribunal.

c. Civil application stands disposed off accordingly.

**JUDGE**