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

CIVIL APPLICATION NO. 2709 OF 2015
IN
FIRST APPEAL (ST.) NO. 15785 OF 2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. A. J. Gondwal i/b S.S. Dwivedi for the applicant.

CORAM : K. K. TATED, J.
DATED : 14/08/2015.

P.C.:

. Not on board. At the request of Advocate for the applicant, matter is taken on board for urgent orders.

2 This application is preferred by Insurance Company for stay of operation and implementation of Award dated 21.11.2014 passed by the Motor Accident Claims Tribunal, Kolhapur in M.A.C.P. No. 293 of 1994 awarding sum of Rs. 2,93,028/- with 7.5 % interest per annum by way of compensation to the respondents-claimants.

3 The learned Counsel for the applicant submits that the respondents-claimants filed execution application no. 64 of 2015. The next date of hearing in the said execution application is 17.08.2015.

4 The learned Counsel for the applicant submits

that if entire amount is recovered by the respondents-claimants in execution application no. 64 of 2015, it will be very difficult for them to recover the same, if they succeed in the present proceeding. Hence, there is an urgency in the present matter.

5 The learned Counsel for the applicant submits that the Tribunal erred in coming to the conclusion that the Insurance Company is liable to pay the compensation of Rs.2,93,028/- to the respondents-claimants, though they brought on record the cheque issued by the owner of the vehicle towards the payment of the premium of insurance policy was dishonoured. Hence, Tribunal ought to have held that on the date of accident, the insurance policy was not inforce and in spite of that the Tribunal held that insurance company is liable to pay compensation. He submits that they have good chance of success in the present matter.

6 The learned Counsel for the applicant submits that in the interest of justice this Hon'ble Court be pleased to stay the operation and implementation of the impugned award till the hearing and final disposal of the First Appeal.

7 The learned Counsel for the applicant submits that they have already deposited sum of Rs.2 lacs in the Trial Court. He submits that he received

instructions from the insurance company that they are ready and willing to deposit remaining amount in Tribunal within four weeks from today. The statement is accepted.

8 In the present proceeding, in the accident which occurred on 21.01.1994 the respondent-claimant sustained injuries. Hence he filed application under Section 166 of M.V. Act for Rs.3,93,500/- by way of compensation. It is to be noted that the objection raised by the Insurance Company about the non existence of insurance policy cannot be considered at this stage. Not only that they have not brought on record any documentary evidence to show that when the cheque issued by the owner of the vehicle was dishonoured and same was intimated by the insurance company to the concerned party.

9 Considering these facts, I am of the opinion that respondent claimant is entitled to withdraw some amount without furnishing any security, but subject to the outcome of the First Appeal.

10 Hence, the following order is passed:

a) The operation and implementation of impugned Award dated 21.11.2014 passed by the Motor Accident Claims Tribunal, Kolhapur in M.A.C.P. No. 293 of 1994 is stayed on condition that applicant Insurance Company to deposit the remaining awarded amount in the Tribunal within four weeks from today, failing which civil application shall stand dismissed without referring back to the court.

b) If amount is not deposited within stipulated time as stated herein above, the claimant is entitled to proceed with the execution application according to law.

c) If amount is deposited within stipulated time as stated herein above, the claimant is entitled to withdraw 25% amount, without furnishing any security but subject to the outcome of the First Appeal.

d) Liberty granted to the respondent claimant to take out appropriate application, if he so desire, for withdrawal of further amount and that application shall be decided on its own merits.

e) The Tribunal is directed to invest the remaining amount in Fixed deposits of any Nationalised Bank, initially for the period of one and half year and same to be continued till hearing and final disposal of the First Appeal.

f) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)