

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

CIVIL APPLICATION NO.1118 OF 2015
IN
FIRST APPEAL (ST) NO.18469 OF 2014

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

Ms. Poonam Mital for the Applicant

CORAM : K. K. TATED, J.
DATE : JUNE 24, 2015

P.C.:

1. Mentioned. Not on board. At the request of learned counsel for the Applicant, the matter is taken on board for urgent orders.

2. This Application is for stay of the operation and implementation of the impugned judgment and award dated 17/09/2014 passed by the MACT Mumbai in Application No.2193/2007 holding that the Respondent-Claimants are entitled to Rs.2,98,000/- with 7.5% p.a. interest by way of compensation.

3. The learned counsel for the Applicant submits that the Respondent-Claimant filed

Execution Application No.34/2015 for recovery of the award amount. She submits that if entire amount is recovered by the Respondent-Claimant in Execution Application, nothing will survive in the present proceedings. She submits that before issuing Insurance Policy in respect of the offending vehicle, the cheque issued by the owner towards premium was dishonoured and therefore, the Insurance Co. is not liable to pay compensation.

4. The learned counsel for the Applicant further submits that she received instructions from the Insurance Co. that they are ready and willing to deposit the entire award amount in the Tribunal within 4 weeks from today. Statement is accepted.

5. In the present proceedings, in an accident which occurred on 20/08/2004, the Respondent-Claimant lost their son who was of 20 years and was working with M/s. Sai Painting Works, Maharashtra Nagar, Mankhurd, Mumbai and was earning salary of Rs.3500/- pm. Initially, the claimants filed Application under section 163A of the Motor Vehicles Act. Subsequently, they carried out amendment and converted the same into an Application under section 166 of the Motor Vehicles Act and claimed additional compensation.

6. Considering the evidence on record, the Tribunal held that the claimants are entitled to sum of Rs.2,98,000/- with 7.5% p.a. interest by way of compensation.

7. It is to be noted that in the present proceedings, the claimants have already filed Execution Application No.34/2015. Moreover, there is delay of 48 days in filing the First Appeal on the part of the Insurance Co.

8. Considering these facts, I am of the opinion that the Respondent-Claimants are entitled to withdraw some amount without furnishing any security.

9. Hence, the following order:

a. The operation and implementation of the impugned judgment and award dated 17/09/2014 passed by the MACT Mumbai in Application No.2193/2007 is stayed subject to the Applicant depositing the entire award amount with costs and interest, if any, in the Tribunal within 4 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

b. If amount is not deposited within stipulated time as stated hereinabove the Respondent-Claimants are entitled to proceed with Execution Application No.34/2015 for recovery of the award amount.

c. If amount is deposited within stipulated time as stated herein above, Respondent-Claimant Laxman Govind Dungahu and Hirabai Laxman Dungahu each entitled to withdraw 25% each of the award amount without furnishing any security, subject to outcome of the First Appeal.

d. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized bank, initially for a period of one year which will be renewed from time to time till hearing and final disposal of the appeal.

e. Liberty granted to the Respondent - claimant to file an appropriate Application for withdrawal of the further amount, if they so desire, which will be decided on its own merits.

f. Civil Application stands disposed off accordingly.

JUDGE