

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

CIVIL APPLICATION NO.1050 OF 2015
IN
FIRST APPEAL (ST) NO.18867 OF 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. A. P. Kulkarni for the Applicant

CORAM : K. K. TATED, J.
DATE : MARCH 9, 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 preferred by the Insurance Co. for stay of the operation and implementation of the impugned judgment and award dated 28/08/2013 passed by the MACT, Malshiras in MACP No.32/2011 holding that the Respondents claimants are entitled to sum of Rs.9,42,000/- with 6% p.a. interest by way of compensation.

3. The learned counsel for the Applicant submits that the Respondent claimants filed Execution Application for recovery of the entire decretal amount. He submits that if the entire decretal amount is recovered in the Execution Application, nothing will survive in the present proceedings. He submits that in the present proceedings, the Tribunal awarded compensation on higher side. He submits that the Tribunal has not considered the contributory negligence at the time of deciding the compensation. He submits that they have good chance of success in the present proceedings. He submits that he received instructions from the Insurance Co. that they are ready and willing to deposit the entire decretal amount with interest, costs and expenses in the Tribunal within 4 weeks from today. Statement is accepted.

4. The learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to stay the impugned judgment and award till hearing and final disposal of the appeal. He submits that if stay is not granted, the Applicant will suffer irreparable loss, harm and injury. They have good chance of success in the present proceedings.

5. In the present proceedings, in an accident which occurred on 18/06/2011 Tatyasaheb @ Bhausahab kadake as well as his daughter Laxmi aged 3 years died. On the day of accident, the deceased was of 29 years who was working as a Driver of a Truck and earning Rs.9000/- pm salary and Rs.150/- towards additional bhatta. Considering these facts, and the reasons disclosed by the Tribunal in the impugned judgment and award, I am of the opinion that the Respondent claimants are entitled to withdraw some amount without furnishing any security. Hence, the following order:

a) The operation and implementation of the impugned judgment and award dated 28/08/2013 passed by the MACT, Malshiras in MACP No.32/2011 is stayed subject to the Applicant depositing the entire decretal amount including interest and in the Tribunal within four weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

b) If the decretal amount is not deposited within stipulated time as stated hereinabove, the Respondent – claimants are entitled to execute the award as per law.

c) If the decretal amount is deposited within stipulated time as stated hereinabove, the Applicant No.1 Gokarna, wife of deceased

Tatyasaheb @ Bhausahab Khadake is entitled to withdraw sum of Rs.2 lacs with accrued interest without furnishing any security, subject to outcome of appeal.

d) Claimant No.5 Uttam Dhyanoba Khadake is entitled to withdraw 25% of the decretal amount with accrued interest without furnishing any security, subject to outcome of appeal.

e) Liberty granted to the claimants to prefer an appropriate Application for withdrawal of the remaining compensation amount, if they so desire, which will be decided on its own merits

f) The Tribunal is directed to invest the remaining decretal amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and the same shall be renewed from time to time till hearing and final disposal of the appeal.

g) Civil application stands disposed off accordingly.

JUDGE