FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.
CIVIL APPLICATION NO.513/13
IN
FIRST APPEAL NO.139/2014

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

Mr. C. M. Lokesh for the Applicant

CORAM : K. K. TATED, J.
DATE : AUGUST 5, 2015

P.C.:

1. Heard. This Application is preferred by the opposite party No.1 for stay of the operation and implementation of the impugned award dated 04/03/2011 passed by the MACT, Mumbai in Application No.481/1999 awarding sum of Rs.1,25,000/- with 8.5% p.a. interest by way of compensation.

2. The learned counsel for the Applicant submits that as per order dated 07/02/2013 passed by this court, they deposited the entire award amount of their share in the Tribunal. Statement is accepted.

3. The learned counsel for the Applicant submits that at the time of awarding sum of Rs.1,25,000/- by way of compensation, the

Tribunal, in paragraph 17 of the impugned judgment held that there was no negligence on the part of the driver of the Applicant in the said accident. Paragraph 17 reads thus:

> *"17. Considering the only contents in the FIR and fact that KSRTC, superintendent who is interested in the KSRTC and to protect the interest of the KSRTC the contents in the FIR were written by the police in Karnataka to help the KSRTC. So I am holding that in the facts and circumstances it is having very much importance for holding that there is no negligence of KSRTC driver in this accident and the said jeep driver was rashly and negligently driving the said jeep and this accident occurred."*

4. The learned counsel for the Applicant submits that in spite of this finding, the Tribunal held that the Applicant is liable to pay the compensation. He submits that the Tribunal has not considered the contributory negligence properly at the time of awarding compensation. He submits that the Applicant has good chance of success in the matter. He submits that if entire amount is withdrawn by the Respondent-Claimant, nothing will survive in the present proceedings. He submits that in the interest of justice this Hon'ble Court be pleased to allow the Civil Application.

5. Considering the submissions made by the learned counsel for the Applicant and the

averments made in the Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application.

6. Hence, the following order:

a) The operation and implementation of the impugned award dated 04/03/2011 passed by the MACT, Mumbai in Application No.481/1999 is stayed till hearing and final disposal of the First Appeal.

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

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

d) Civil Application stands disposed off accordingly.

JUDGE