

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

**CIVIL APPLICATION NO. 1557 OF 2015
IN
FIRST APPEAL (ST.) NO. 11559 OF 2015**

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. Rajesh Kanojia a/w Deepilka Matagi i/b Res Juris for the applicant.

Mr. S.S. Vidyarthi for the respondent no.1.

CORAM : K. K. TATED, J.

DATED : 27/04/2015.

PC.:

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

2 The learned Counsel for the applicant submits that the respondent no.1 claimant filed execution application for recovery of entire amount. Hence, there is urgency in the present matter.

3 This application is preferred by insurance company for stay of operation and implementation of the impugned Judgment and Award dated 02.07.2014 passed by M.A.C.T. Mumbai in Petition No. 1499 of 2008 .

4 The learned Counsel for the applicant submits that in the present proceeding, the Tribunal has

warded sum of Rs.11,53,700/- towards the medical treatment. This amount is disputed by the applicant. He submits that the claimant failed to produce on record the original bills. In spite of that, the Tribunal has awarded the said amount. He further submits that even the amount awarded by the Tribunal is on higher side. He submits that they have good chance of success in the present proceeding. He submits that if entire amount is recovered by the respondent claimant in execution proceeding, nothing will survives in the present litigation. Hence, in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of impugned Judgment and Award dated 02.07.2014 passed by the Tribunal in Petition no. 1499 of 2008.

5 The learned Counsel for the applicant submits that he received instructions from the applicant insurance company that they are ready and willing to deposit the entire awarded amount with interest and costs in Tribunal within six weeks from today.

6 On the other hand, the learned Counsel for the respondent no.1 claimant vehemently opposed the present Civil Application. He submits that the claimant already spent more than Rs.11,00,000/- towards the medical treatment. He further submits that if the stay is granted in favour of the applicant, irreparable loss and injury will be caused to the

claimant. He submits that as on today, the award passed by the Tribunal is in his favour. Not only that, Tribunal specifically passed order that the claimant can withdraw the amount except Rs.20,00,000/- . Therefore, there is no substance in the present Civil Application and same to be dismissed with costs.

7 I heard both the sides at length. It is to be noted that in the present proceeding, though the original bills not placed on record by the claimant, the Trial Court has not considered the same and awarded Rs.11,53,700/- towards medical treatment. Apart from that, the learned Counsel for the applicant made a statement that the applicant is ready and willing to deposit the entire decretal amount in the Tribunal. Hence, I am of the opinion that applicant has made out a case for stay.

8 Liberty granted to the respondent no.1 claimant to prefer appropriate application, if he so desire, for withdrawal of amount and that application will be decided on its own merits.

9 Hence, the following order.

a) The operation and implementation of Judgment and Award dated 02.07.2014 passed by the Motor Accident Claims Tribunal, Mumbai in Petition No. 1499 of 2008 is stayed, on condition that applicant to deposit the entire awarded amount

including interest and costs in the Tribunal within six 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, respondent no.1 claimant is entitled to execute the award according to law.

c) If amount is deposited within stipulated time as stated herein above, liberty granted to the respondent no.1 claimant to prefer application, if he so desire, for withdrawal of amount and that application will be decided on its own merits.

d) Civil Application is disposed of accordingly.

(K.K.TATED, J.)