

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

**CIVIL APPLICATION NO. 2642 OF 2013
IN
FIRST APPEAL NO. 1019 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. Anil S. Kadam for the applicant.

Ms.Poonam Mittal for the respondent/ori. Appellant.

CORAM : K. K. TATED, J.

DATED : 18/04/2015.

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by claimant for withdrawal of amount deposited by the insurance company pursuant to the order passed by this Court in Tribunal.

3 The learned Counsel for the applicant submits that in accident, which occurred on 15.06.2006, applicant suffered following injuries:

a) Tenderness with deformity with swelling of Lt. leg.

b) Movement of Lt. knee and ankle painful.

c) Unable to squat, climb, stair, walk, stand without support.

d) Fracture has malunited clinically and radiologically.

e) Pt. has lost active use of Lt. lower limb.

4 The learned Counsel for applicant submits that applicant suffered 36% permanent disability. He submits that because of permanent disability, it is not possible for applicant to do the same profession i.e. driving of auto rickshaw. He submits that it is very difficult for applicant to maintain himself and his family because of the accident which occurred. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the applicant to withdraw the amount deposited by the insurance company in the Tribunal. He further submits that if present Civil Application is not allowed, irreparable loss and injury will be caused to the applicant.

5 On the other hand, the learned Counsel for the insurance company vehemently opposed the present Civil Application. She submits that in the present proceeding, the applicant failed to prove the relationship of employer-employee and therefore, insurance company is not liable to pay any compensation. She further submits that if the entire amount is withdrawn by the applicant, then it will be very difficult for them to recover the same, if they succeed in the present First Appeal. Hence, there is no substance in the Civil Application and same be dismissed with costs.

6 I heard both the sides at length. In the present proceeding, the insurance company has raised objection about the relationship of employer-

employee between claimant and original opposite party. It is to be noted that by order dated 17.10.2012 passed by this court, this court allowed the applicant to withdraw sum of Rs.1,00,000/- without furnishing any security.

7 Considering the submissions made by the learned Counsel for the applicant, reasons disclosed in paragraph 4 of Civil Application and as the applicant sustained 36% disability, I am of the opinion that applicant claimant is entitled to withdraw further amount. Hence, the following order.

ORDER

a) Applicant claimant is entitled to withdraw further amount of Rs.1,00,000/- without furnishing any security, but subject to the outcome of the First Appeal.

b) Applicant claimant is permitted to withdraw the remaining amount by furnishing solvent security to the satisfaction of the Tribunal within 12 weeks from today.

c) Civil Application is disposed of accordingly.

(K.K.TATED, J.)