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

CIVIL APPLICATION NO.2308/2015
IN
FIRST APPEAL (ST) NO.14297/2015

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

Ms. Varsha Chavan for the Applicant

CORAM : K. K. TATED, J.
DATE : JULY 10, 2015

P.C.:

1. Mentioned. Not on board. At the request of the learned counsel for the Applicant, 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 award dated 31/07/2014 passed by the MACT Mumbai in MACP No.2872/2007.

3. The learned counsel for the Applicant submits that the Respondent-Claimant filed Execution Application No.161/2015 for recovery of the entire amount. She submits that if entire awarded amount is withdrawn by the Respondent-

Claimant, nothing will survive in the present proceedings.

4. The learned counsel for the Applicant submits that the Tribunal, by impugned award awarded sum of Rs.24,30,000/- with 7.5% p.a. interest to the Respondent-Claimant.

5. The learned counsel for the Applicant submits that though the claimants, in their Application stated that the deceased was doing business in the name and style of M/s. V. V. Fashions Pvt. Ltd., failed to place on record any document to show their proprietorship of the business. She submits that the claimants themselves brought on record several assessment orders of Income Tax, which shows that the deceased was getting salary and not business as claimed by the claimants. She submits that even the Tribunal erred in coming to the conclusion that the deceased was earning Rs.15,000/- pm. from business. She further submits that the multiplier 18 taken by the Tribunal was on higher side. She further submits that the Applicant has good chance of success in the matter. She submits that in the interest of justice, this Hon'ble Court be pleased to stay the impugned award.

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

7. The learned counsel for the Applicant submits that an amount of Rs.25000/- deposited towards statutory deposit by them at the time of filing the present appeal be transferred to the Tribunal with accrued interest, if any.

8. It is to be noted that in an accident, which occurred on 19/02/1997, the Respondent-Claimant lost her son. On the day of accident, the deceased was 25 years old. As per the contention of the claimant, the deceased was doing business in the name and style as M/s. V. V. Fashions Pvt. Ltd. and was earning Rs.2,65,625/- p.a. Considering the fact that the Respondent No.1 claimant lost her son who was 25 years old and he was doing business and getting salary from M/s. V. V. Fashions Pvt. Ltd. and there is delay on the part of the Insurance Co. to file the present appeal, I am of the opinion that the claimant is entitled to withdraw some amount.

9. Considering these facts , I am of the opinion that the claimant can withdraw 25% of the awarded amount with accrued interest without furnishing any security, subject to the outcome of the First Appeal.

10. Hence, the following order is passed:

a. The operation and implementation of the impugned award dated 31/07/2014 passed by the MACT Mumbai in MACP No.2872/2007 is stayed, subject to the Applicant depositing the entire decreetal amount along with interest and cost, 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 hereinbaove, the Respondent-Claimant is entitled to execute the award in accordance with law.

c. If amount is deposited within stipulated time as stated hereinbaove, the Respondent-Claimant Smt. Ishwari Thanwarmal Bajaj is entitled to withdraw 25% of the awarded amount with accrued interest without furnishing any security, subject to outcome of the First Appeal.

d. The Respondent-Claimant is entitled to file an appropriate Application for withdrawal of the further amount, if they so desire, which will be decided on merits.

e. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of 1 year, which shall be renewed from time to time, till further orders.

f. An amount of Rs.25,000/- deposited towards statutory deposit by the Applicant Insurance Co. at the time of filing of the present appeal shall be transferred to the Tribunal.

g. Civil Application stands disposed of accordingly.

JUDGE