

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

**CIVIL APPLICATION NO. 2402 OF 2015
IN
FIRST APPEAL (ST.) NO. 14452 OF 2015**

The New India Assurance Co. Ltd. ... Applicant.
V/s.
Shri. Ramchandra Mahadeo Patole & Ors. ... Respondents

Mr. D. R. Mahdik for the applicant.

**CORAM : K. K. TATED, J.
DATED : 24/07/2015.**

PC.:

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

2 This application is preferred by Insurance Company for stay of operation and implementation of the impugned Award dated 20.12.2013 passed by the Motor Accident Claims Tribunal, Raigad at Alibag in M.A.C.P. No. 219 of 2006 by which the Tribunal held that the claimants nos. 1 and 2 are entitled to compensation of Rs.5,23,000/- with 7.5% interest p.a.

3 The learned Counsel for the applicant submits that the respondents-claimants filed execution application no. 13 of 2015 for recovery of entire awarded amount. He submits that if entire award is recovered by the claimants in execution application, irreparable loss and injury will be caused to the applicants.

4 The learned Counsel for the applicant submits that the Tribunal failed to consider that on the date of accident the offending vehicle was not covered by the insurance policy. He submits that the cheque issued by the owner towards the payment of premium of the insurance policy was dishonoured. Hence, Insurance Company is not liable to pay any compensation.

5 The learned Counsel for the insurance company submits that he received instructions from the insurance company that they are ready and willing to deposit entire awarded amount in Tribunal within four weeks from today. The statement is accepted.

6 In the present proceeding, the accident which occurred on 12.01.2006 the claimant nos. 1 and 2 lost their son Deepak. On the date of accident, he was 23 years old and was working as sub dealer of milk dairy of Deccan Agro Kolhapur, branch Navi Mumbai. He used to sell 250 liters milk daily and was getting commission of Rs.2/- per liter.

7 Considering these facts, I am of the opinion that the claimant nos. 1 and 2 are entitled to withdraw some amount without furnishing any security, as there is delay on the part of the Insurance Company to file present First Appeal in this court.

8 Hence, the following order.

a) The operation and implementation of impugned Award dated 20.12.2013 passed by the Motor Accident Claims Tribunal, Raigad at Alibag in M.A.C.P. No. 219 of 2006, is stayed on condition

that applicant to deposit awarded amount within four 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, the respondents-claimants can proceed with the execution application no. 13 of 2015 according to law for recovery of awarded amount.

c) If amount is deposited within stipulated time as stated herein above, the claimant no.1 Shri. Ramchandra Mahadeo Patole and claimant no.2 Sou. Shobha Ramchandra Patole are entitled to withdraw sum of Rs.1,00,000/- each with accrued interest without furnishing any security, subject to the outcome of the appeal.

d) Liberty granted to the respondents claimants to take out appropriate application, if they so desire, for withdrawal of the amount and that application will be decided on its own merits.

e) The Tribunal is directed to invest the remaining amount in Fixed deposits of any Nationalised Bank, initially for the period of one year and same to be continued till hearing and final disposal of the First Appeal.

f) The Registry of this Court is directed to transfer the amount of Rs.25,000/- with interest if any, which was deposited by the applicant at the time of filing of First Appeal, to the Tribunal in the

account of M.A.C.P No. 219 of 2006.

g) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)