

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

CIVIL APPLICATION NO.2384/2015
IN
FIRST APPEAL NO.758/2015

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. D. R. Mahadik for the Applicant

CORAM : K. K. TATED, J.

DATE : JULY 20, 2015

P.C.:

1. Mentioned. Not on board. At the request of learned counsel for the Applicant, the matter is taken on board for urgent orders.

2. This Application is preferred by the Insurance Co. for stay of the operation and implementation of the award dated 14/01/2015 passed by the MACT in Application No.1159/2009 by which the Tribunal awarded sum of Rs.3,84,000/- with 6% p.a. by way of compensation.

3. The learned counsel for the Applicant submits that the Respondent-Claimant filed Execution Application for recovery of the entire amount. He submits that the date of hearing in

the Execution Application is 21/07/2015. Hence, there is urgency.

4. The learned counsel for the Applicant submits that in the present proceedings, the Respondent No.1 claimant lost his mother. On the date of accident, she was 48 years old. He submits that on the date of accident the claimant was 30 years old and he was earning independently. Hence, there was no question of dependency of the claimant on his mother. Therefore, the Insurance Co. is not liable to pay compensation. He further submits that the claimant has not placed on record any evidence to show that the deceased was earning Rs.4000/- pm. from her employment, prior to the incident. The Tribunal has awarded compensation on higher side. He submits that the Applicant has good chance of success in the matter. If stay is not granted and in case the Respondent-Claimant recovers the entire awarded amount in the Execution Application in that case, irreparable loss and injury will be caused to the Applicant. He further submits that if the Applicant succeeds in the present appeal, it would be very difficult for them to recover the same from the Respondent-Claimant.

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

6. The learned counsel for the Applicant submits in the interest of justice this Hon'ble Court be pleased to stay the operation and implementation of the impugned award till hearing and final disposal of the First Appeal.

7. The learned counsel for the Applicant further submits that the amount of Rs.25000/- deposited by the Appellant towards statutory deposit at the time of filing of the appeal may be transferred to the Tribunal.

8. It is to be noted that in the present proceedings the Respondent-Claimant lost his mother. On the date of accident she was 48 years old and was earning near about Rs.4000/- pm. The Trial Court, in paragraph 11 of the impugned award stated that the deceased was the only earning member in her family. Considering the reasons given by the Tribunal in paragraph 11 of

the impugned award, I am of the opinion that the Respondent-Claimant is entitled to withdraw 25% of the awarded amount without furnishing any security, subject to outcome of the First Appeal.

9. Hence, following order is passed:

a. The operation and implementation of the impugned judgment and award dated 14/01/2015 passed by the MACT in Application No.1159/2009 is stayed subject to the Applicant depositing the entire award amount with costs and interest, 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 hereinabove the Respondent-Claimants are entitled to execute the award as per law.

c. If amount is deposited within stipulated time as stated herein above, Respondent-Claimant is entitled to withdraw 25% of the award amount with interest without furnishing any security, subject to outcome of the First Appeal.

d. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any

Nationalized bank, initially for a period of one year which will be renewed from time to time till further orders.

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

f. Amount of Rs.25000/- deposited by the Appellant towards statutory deposit at the time of filing the appeal shall be transferred to the Tribunal.

g. Civil Application stands disposed off accordingly.

JUDGE