

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

**CIVIL APPLICATION NO. 2101 OF 2015
IN
FIRST APPEAL NO. 689 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. Milind More for the applicant.

**CORAM : K. K. TATED, J.
DATED : 16/06/2015.**

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 Award dated 27.03.2015 passed by the Commissioner, Employees Compensation And Judge, 9th Labour Court, Mumbai in Application (WCA) No. 123/B-30 of 2014 holding that the respondents claimants are entitled to Rs.9,05,520/- with 12% interest p.a. by way of compensation.

3 The learned Counsel for the applicant submits that respondents claimants filed execution application for recovery of entire awarded amount. He submits that if entire amount is recovered by the respondents claimants, nothing will survive in the present proceeding. Hence, he has mentioned the

matter for urgent order.

4 The learned Counsel for the applicant submits that the Tribunal erred in coming to the conclusion that insurance company is also liable to pay compensation in the present matter. He submits that on the date of accident the deceased Ananta was employed as a loader-cum-delivery boy on motor vehicle no. MH-04-EB-6982 owned by M/s. Moni Sales. He submits that so far the liability of the insurance company under policy does not cover the loader-cum-delivery boy. He submits that this fact is not considered by the Tribunal at the time of passing the impugned award. He submits that they have good chance of success in the present proceeding.

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

6 In the present proceeding, in a accident which occurred on 13.03.2012, the deceased Ananta was working as loader-cum-delivery boy on motor vehicle no. MH-04-EB-6982. That time, he was getting Rs.8,000/- per month towards the salary. The Tribunal has not considered the objections raised by the insurance company that they are not liable to pay compensation because on the date of accident,

the deceased was working as loader-cum-delivery boy. Whether insurance company are liable or not that can be decided at the time of final hearing of the First Appeal. The legal heirs of deceased filed claim petition under Workmen's Compensation act. Considering this fact, I am of the opinion that claimant nos. 1 and 2 are entitled to withdraw some amount without furnishing any security.

8 Hence, the following order.

a) The operation and implementation of Award dated 27.03.2015 passed by the Commissioner, Employees Compensation And Judge, 9th Labour Court, Mumbai in Application (WCA) No. 123/B-30 of 2014, is stayed in favour of insurance company on condition that insurance company have to deposit the entire awarded amount before the Tribunal 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 are entitled to proceed with the execution proceeding according to law.

c) If amount is deposited within stipulated time as stated herein above, the claimant no.1 Shri. Gunwanta Kishan Wankhade and claimant no. 2 Smt. Rekha Gunwant Wankhade, both of them are entitled to withdraw compensation 15% each

without furnishing any security.

d) 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 further orders.

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

f) Civil Application is disposed of accordingly.

(K.K.TATED, J.)