

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

CIVIL APPLICATION NO.2351 OF 2014
IN
FIRST APPEAL NO.39 OF 2012

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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Mrs. Praneta P. Hingmire for the Applicant
Mr. S. M. Dange for the Respondent.

CORAM : K. K. TATED, J.
DATE : APRIL 10, 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 for withdrawal of the amount deposited by the Appellant Insurance Co. in the Tribunal.

3. In the present proceedings, in an accident which occurred on 18/02/2006 the claimant lost their son Kiran. As per the contention of the Applicant the deceased was doing agricultural activities and other work and thereby earning Rs.14000/- pm. On the basis of this submission, the Applicant preferred Application under section

166 of the Motor Vehicles Act for compensation of Rs.20 lacs. The Tribunal, after considering the evidence on record held that the claimants are entitled to sum of Rs.10,61,875/- with 7.5% pa interest from the date of filing of the petition till realisation of the amount of compensation.

4. The learned counsel for the Applicant submits that the Applicant lost their son in the said accident. It is very difficult for them to maintain day-to-day life. He further submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicant to withdraw the amount deposited by the Appellant Insurance Co. The learned counsel for the Applicant submits that if the Application is not allowed, irreparable loss, harm and injury will be caused to the Applicant.

5. On the other hand, the learned counsel for the Appellant submits that the deceased was travelling in the offending vehicle as a gratuitous passenger therefore, the Insurance Co. is not liable to pay any compensation. He further submits that if the entire amount is withdrawn by the claimant, then it will be very difficult for them to recover the same if they succeed. Hence, there is no substance in the Application. Same be dismissed with costs.

6. It is to be noted that in an accident which occurred on 18/02/2006 the Applicant lost their son Kisan who was earning Rs.14000/- pm. as per their contention. The Tribunal, considering the evidence on record held that the claimants are entitled to sum of Rs.10,61,815/- by way of compensation with interest. Both the Applicants are senior citizen. Considering the fact that the Applicant lost their son in the accident and at present they have no source of income, I am of the opinion that the Applicants are entitled to withdraw sum amount without furnishing any security.

7. The contention raised by the learned counsel for the Applicant about the gratuitous passenger cannot be considered at present in the present Civil Application. There is no discussion in the judgment and award passed by the Tribunal on the said issue. Hence, the following order:

a. Both the Applicant No.1 Heerabai Uttam Kothule and No.2 Uttamrao Annaji Kothule are entitled to withdraw 25% amount each without any security, subject to outcome of the present appeal.

b. 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 hearing and final disposal of the appeal.

c. Civil Application stands disposed off accordingly.

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JUDGE