

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

**CIVIL APPLICATION NO. 2346 OF 2015
IN
FIRST APPEAL (ST) NO. 18825 OF 2015**

New India Assurance Co. Ltd.	.. Applicants
V/s.	
Smt. Pratibha Shirish Shah & Ors.	... Respondents

Mr. D.S. Joshi for the applicant.

**CORAM : K. K. TATED, J.
DATED : 16/07/2015.**

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 the Insurance Company for stay of operation and implementation of impugned Award dated 01.10.2014 passed by the Motor Accident Claims Tribunal, Thane in M.A.C.P. No. 801 of 2010 holding that respondents claimants are entitled to sum of Rs.24,82,000/- with 7.5% interest by way of compensation.

3 The learned counsel for the applicant submits that respondents claimants filed Execution Application no. 33 of 2015 before the Tribunal for recovery of entire awarded amount. He submits that if entire amount is recovered by the respondents claimants in Execution Application, nothing will survive in the present proceeding. Hence, there is urgency.

4 The learned Counsel for the applicant submits that in an accident, which occurred on 14.06.2010 Shirish Shah died. On the date of accident, he was 52 years old and he was doing business. He submits that the respondents-claimants filed application under Section 166 of M.V. Act claiming compensation. He submits that the Tribunal erred in coming to the conclusion that the applicants are entitled to Rs. 24,82,000/- by way of compensation.

5 The learned Counsel for the applicant submits that Tribunal failed to consider that the respondents-claimants have to place on record documentary evidence to show the exact income of the deceased from his business. He submits that the income tax returned filed by the claimants for the subsequent year i.e. for the assessment year 2011-12 show the same income from the business of the deceased. This shows that there was no loss of income for future. He submits that inspite of that the Tribunal held that the respondents-claimants are entitled compensation for future prospect. He submits that Tribunal has awarded 30% income towards the future prospect by way of compensation, which is contrary to law declared by the Apex Court. He submits that they have good chance of success in the present matter. He submits that if stay is not granted, irreparable loss and injury will be caused to the applicant.

6 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.

7 Considering the submissions made by the learned Counsel for the applicant, avernments made in Civil Application and as the insurance company ready and willing to deposit the entire awarded amount in the Tribunal, I am satisfied that applicant has made out case for allowing Civil Application.

8 It is to be noted that in the accident, which occurred on 14.06.2010 the claimant no.1 lost her husband, claimants nos. 2 and 3 their father and claimant no.4 her son. Considering the reasons given by the Trial Court in paragraph 25 at the time of calculating total compensation payable to the claim, I am of the opinion that respondents are entitled to withdraw some amount without furnishing any security but subject to the outcome of the present First Appeal.

9 It is to be noted that in the present proceeding, there is delay of more than 182 days in filing First Appeal. This is also one of the ground that respondents-claimants are entitled to withdraw the amount without furnishing any security.

10 Hence, the following order.

a) The operation and implementation of impugned Award dated 01.10.2014 passed by the Motor Accident Claims Tribunal, Thane in M.A.C.P. No. 801 of 2010, is stayed in condition that applicant insurance company have to deposit the entire awarded amount including interest and costs in 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 can proceed with their execution application no. 33 of 2014 for recovery of awarded amount.

c) If amount is deposited within stipulated time as stated herein above, all the claimants are entitled to withdraw 12.5% amount each without furnishing any security, but subject to the outcome of the First Appeal.

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 hearing and final disposal of the First Appeal.

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) 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. 801 of 2010.

g) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)