

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

CIVIL APPLICATION NO.1828 OF 2015
IN
FIRST APPEAL (ST) NO.26244 OF 2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Ms. Poonam Mital for the Applicant

CORAM : K. K. TATED, J.
DATE : JUNE 24, 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 impugned judgment and award dated 16/09/2013 passed by the MACT, Mumbai in Application No.790/2004 awarding sum of Rs.3,85,000/- with 7.5% p.a. interest by way of compensation in favour of the Respondent-Claimant.

3. The learned counsel for the Applicant submits that the Respondent-Claimant filed Execution Application No.104/2015 for recovery of the entire amount. She submits that if entire amount is recovered by the Respondent-Claimant, nothing will survive in the present proceedings. Hence, there is urgency.

4. The learned counsel for the Applicant submits that the Trial Court erred in coming to the conclusion that the Insurance Co. is liable to pay compensation. She submits that in an accident which occurred on 29/12/2003 the husband of Applicant No.1 got injured. Thereafter he died on 24/10/2004. She submits that the death occurred after more than 10 months from the date of accident. She submits Dr. Azim A. Siddiqui entered into witness box and specifically stated that the deceased died due to cardio respiratory arrest. She submits that considering the evidence on record of Dr. Azim A. Siddiqui, it is crystal clear that the deceased died because of cardio respiratory arrest and not because of accident. Hence, the Insurance Co. is not liable to pay compensation. These facts are not considered by the Tribunal.

5. The learned counsel for the Applicant submits that she received instructions from the Insurance Co. that they are ready and willing to deposit the entire award amount in the Tribunal.

6. Considering the submissions made by the learned counsel for the Applicant, I am of the opinion that the Applicant has made out a case for stay of the impugned award dated 16/09/2013 on certain terms and conditions.

7. In the present proceedings, after the accident which occurred on 29/12/2003 the deceased was admitted in KEM Hospital as well as JJ Hospital, Mumbai for more than 3 months. He was also taking private treatment from 13/03/2004 to 01/08/2004. Considering the evidence on record, the Tribunal held that the claimants are entitled to Rs.3,85,000/- with 7.5% p.a. interest by way of compensation.

8. Considering the fact that the Applicant has to maintain her minor child and there is delay of 240 days on the part of the Insurance Co. in preferring the First Appeal, I am of the opinion that the Respondent – claimant is entitled to withdraw some amount without furnishing any security.

9. Hence, the following order:

a. The operation and implementation of the impugned judgment and award dated 16/09/2013 passed by the MACT, Mumbai in Application No.790/2004 is stayed, subject to the Applicant depositing the entire award amount 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 herein above, the Respondent-Claimant are entitled to execute the decree according to law.

c. If amount is deposited within stipulated time as stated herein above, the Respondent-Claimant Smt. Nafisa Naved Kamal is entitled to withdraw 1/3 of the award amount with accrued 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 hearing and final disposal of the appeal.

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. Civil Application stands disposed off accordingly.

JUDGE