

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

CIVIL APPLICATION NO.165 OF 2014
IN
FIRST APPEAL No. 921 OF 2009

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

Mr. Pankaj Deokar for the Applicant
Mr. Nikhil Mehta i/b. KMC Legal Venture for the Respondent.

CORAM : K. K. TATED, J.
DATE : MARCH 25, 2015

P.C.:

1. Heard. This Application is preferred by the claimants for withdrawal of the amount deposited by the Respondent No.1 Insurance Co. in the Tribunal pursuant to the order passed by this court. The learned counsel for the Applicant submits that in an accident which occurred on 28/04/2006, the Applicant lost their son Ramdas @ Pintu Mahadeo Kolpe. He was studying in 9th standard. He was helping the claimants in agricultural work and was earning Rs.1500/- pm.

2. On the basis of these facts, the claimants filed Application under section 166 of the Motor Vehicles Act claiming compensation of

Rs.2,50,000/-. The learned counsel for the Applicant submits that the Trial Court has taken notional income and awarded some of Rs.2,25,000/- with 9% p.a. interest. The learned counsel for the Applicant submits that they required the amount deposited by the Respondent Insurance Co. because of financial crisis. He submits that, if Civil Application is not allowed, irreparable loss, harm and injury will be caused to the Applicant.

3. On the other hand, the learned counsel for the Respondent Insurance Co. vehemently opposed the present Civil Application. He submits that the appeal filed by them against the impugned judgment and award passed by the Tribunal is admitted by this court. He submits that the deceased was traveling as a gratuitous passenger in the offending vehicle and hence, the Insurance Co. is not liable to pay any compensation. He submits that the Tribunal has awarded compensation at higher side. He submits that if the amount is withdrawn by the Applicant claimants without furnishing any security, it would be difficult for them to recover the same in case they succeed in the present appeal. He submits that, the Applicants have good chance of success in the

present appeal. Hence, the Civil Application preferred by the claimants is required to be dismissed with costs.

4. In the present proceedings, the Applicant claimants lost their son in an accident which occurred on 28/04/2006, the Applicant lost their son Ramdas @ Pintu Mahadeo Kolpe. He was studying in 9th standard. He was helping the claimants in agricultural work and was earning Rs.1500/-pm.

5. The objection raised by the Respondent Insurance Co. in respect of the gratuitous passenger cannot be considered at this stage. It is specifically stated in paragraph 1 of the impugned judgment and award that the deceased was relative of the owner of the jeep and therefore, he travelled in jeep.

6. Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. At the same time, the Applicants are entitled to withdraw some amount without furnishing any security.

7. Hence, the following order:

a) The Applicant No.1 Mahadeo Kisan Kolpe and Applicant No.2 Mrs. Subhadra Mahdeo Kolpe are entitled to withdraw 25% each without furnishing any security.

b) Both the Applicants can withdraw additional 25% each with accrued interest within 12 weeks from today by furnishing solvent security to the satisfaction of the Trial Court.

c) It is made clear that if the Applicant failed to withdraw the amount within stipulated time as stated hereinabove, the Tribunal is directed to invest the 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 final disposal of the appeal, if not invested.

d) Civil Application stands disposed off accordingly.

JUDGE