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

CIVIL APPLICATION NO.1005 OF 2015
IN
FIRST APPEAL NO.297 OF 2015

The Divisional Manager,
New India Assurance Co. Ltd. … Applicant

Vs.

Mankadas Ramdas Vaishnav & Ors. … Respondents

Mr. H. G. Misar for Applicant.
Ms. Yogita M. Deshmukh for the Respondent Nos.1 and 2.

CORAM : K. K. TATED, J.
DATE : MARCH 12, 2015

P.C.:

1. Heard. This Application is preferred by the Insurance Co. for stay of the operation and implementation of the impugned judgment and award dated 17/07/2014 passed by the MACT, Nasik in MACP No.649/2008 holding that the Respondent claimants are entitled to compensation of Rs.3,90,000/- with 6% pa interest.

2. The learned counsel for the Applicant submits that the Tribunal erred in coming to the conclusion that the Insurance Co. is liable to pay the compensation. He submits that on the date of accident i.e. 10/12/2007 the driver of the offending vehicle was not holding a license. He submits that the Insurance Co. relied on the judgment and award passed by the MACT in MACP No.639/2008 to support their

contention. He submits that in spite of that, the Tribunal held that Insurance Co. is liable to pay the compensation and recover from the owner.

3. On the other hand, the learned counsel for the Respondent claimants vehemently opposed the Civil Application. She submits that in an accident which occurred on 10/12/2007 the claimants lost their son aged about 32 years. She submits that on the date of accident, the deceased was earning sum of Rs.4000/- to Rs. 5000/- pm. She submits that in spite of these facts, the Tribunal has considered notional income of Rs.3000/- pm. She submits that the Tribunal has deducted $1/3^{rd}$ amount and considered the income of deceased at Rs.2000/- pm. She submits that the Tribunal has considered multiplier 16 only at the time of awarding compensation. She submits that the Insurance Co. has not placed on record any documentary evidence to show that on the date of accident the driver of the offending vehicle was holding license. On the basis of this submission, the learned counsel for the Insurance Co. submits that there is no substance in the Civil Application. Same be dismissed with costs.

4. In the present proceedings, the Insurance Co. has placed on record a judgment in MACP No.639/2008 to prove their case that the driver of the offending vehicle was not holding valid license on the date of accident i.e. 10/12/2007. Apart from this, no one entered into witness box on behalf of the Insurance Co. In any case, the Tribunal has specifically passed order that first the Insurance co. has to pay entire amount and/or recover the same from the owner of the

offending vehicle. Considering these facts, I am of the opinion that the Insurance Co. has to deposit the entire decretal amount in the Tribunal.

5. Considering the fact that, the Respondent claimants lost their 32 years old son in an accident which occurred on 10/12/2007, at present they are entitled to withdraw some amount without furnishing any security with liberty to file an appropriate Application for withdrawal of the remaining compensation amount, if they so desire, which will be decided on its own merits.

6. Hence, the following order:

a) The operation and implementation of the impugned judgment and award dated 17/07/2014 passed by the MACT, Nasik in MACP No.649/2008 is stayed only against Applicant New India Assurance Co. Ltd., subject to the Applicant deposits the entire decretal amount with interest, if any, in the Tribunal within 6 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

b) If the decretal amount is not deposited within stipulated time as stated hereinabove, the Respondent claimants are entitled to execute the decree in accordance with law.

c) If the decretal amount is deposited within stipulated time as stated hereinabove, the Respondent claimant No.1 Manakdas Ramdas Vaishnav and claimant No.2 Sunanda Manakdas Vaishnav are entitled to withdraw the sum of Rs.50,000/- each with accrued interest, without furnishing any security.

d) Liberty granted to the claimants to prefer an appropriate Application for withdrawal of remaining compensation amount, if they so desire, which will be decided on its own merits

e) The Tribunal is directed to invest the remaining decretal amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and the same shall be renewed from time to time till hearing and final disposal of the appeal.

f) Civil application stands disposed off accordingly.

JUDGE