

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

CIVIL APPLICATION No. 4253 OF 2012
IN
FIRST APPEAL NO.1884 OF 2013

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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Mr. Nikhil Mehta i/b. KMC Legal for the Applicant
Mr. Abay Kumar Apte for the Respondent Nos.1 and 2.

CORAM : K. K. TATED, J.
DATE : APRIL 29, 2015

P.C.:

1. Heard the learned counsel for the parties. This Application is filed by the Insurance Co. for stay of the operation and implementation of the impugned judgment and award dated 05/05/2012 passed by the MACT, Pune in MACP No.345/2008.

2. The learned counsel for the Applicant submits that they already deposited the entire decretal amount in the Tribunal. The learned counsel for the Applicant submits that in the present proceedings, the Tribunal erred in coming to the conclusion that the Insurance Co. is liable to pay compensation even though charge sheet is not filed against driver of the offending vehicle for

rash and negligent driving. He submits that, unless and until rash and negligent driving is proved against the driver, the Insurance Co. is not liable to pay any compensation. Therefore, the impugned judgment and award be stayed.

3. On the other hand, the learned counsel for the Respondent-Claimant vehemently opposed the Civil Application. He submits that the Applicant has not shown sufficient cause for stay of the impugned judgment and award. He submits that as the Applicant has already deposited the entire amount in the Tribunal, the Respondent-Claimant may be allowed to withdraw some amount.

4. It is to be noted that in the present proceedings, in an accident which occurred on 24/11/2007 the Respondent-Claimant sustained injuries. Hence, he filed the Application under section 166 of the Motor Vehicles Act for compensation of Rs.1 lac. The Tribunal, at the time of answering issue No.3 specifically recorded that the Insurance Co. has not raised any objection in their written statement about filing of charge sheet against the offending vehicle. Therefore, the objection raised by the advocate for the Applicant cannot be sustained at this stage. Moreover, the

Trial Court also recorded that the Applicant has not placed on record any evidence to show that the driver of the offending vehicle was not holding a valid license at the time of accident. This itself shows that the Insurance Co. is liable to pay compensation.

5. Considering the submissions made by the learned counsel for the Applicant and the above mentioned facts and circumstances of the present case, following order is passed:

a. The operation and implementation of the impugned judgment and award dated 05/05/2012 passed by the MACT, Pune in MACP No.345/2008 is stayed.

b. The Respondent-Claimant are entitled to withdraw the entire amount without furnishing any security, subject to outcome of the appeal.

c. The amount of Rs.25000/- deposited by the Applicant in this court be transferred to the Tribunal.

d. Civil Application stands disposed off accordingly.

JUDGE